TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 210.

CAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
APPELLANT,

vs.

E. OSBORNE, AS TAX COMMISSIONER OF THE STATE OF NEBRASKA; GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA; FRED E. ERICSON, AS COUNTY TREASURER, BURT COUNTY, NEBRASKA, ET AL.

AL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED FEBRUARY 14, 1923.

(29,402)

(29,402)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 219.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,

vs.

W. H. OSBORNE, AS TAX COMMISSIONER OF THE STATE OF NEBRASKA; GILBERT E. HAASE, AS COUNTY TREASURER, BUFFALO COUNTY, NEBRASKA; FRED E. ERICSON, AS COUNTY TREASURER, BURT COUNTY, NEBRASKA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 19, 1923.

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1-3 IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, LINCOLN DIVISION.

TRANSCRIPT OF THE RECORD ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

In the Matter of

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Appellant,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska; H. C. Haverly, as County Treasurer, Adams County, Nebraska; G. E. Thornton, as County Treasurer, Antelope County, Nebraska; George C. Waters, as County Treasurer, Blaine County, Nebraska; F. W. Irish, as County Treasurer, Box Butte County, Nebraska; G. E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; P. A. Tomek, as County Treasurer, Butler County, Nebraska; Mike Tritsch, as County Treasurer, Cass County, Nebraska; F. O. Robinson, as County Treasurer, Cedar County, Nebraska; Mrs. A. B. Grant, as County Treasurer, Chase County, Nebraska; M. Lancaster, as County Treasurer, Cheyenne County, Nebraska; H. J. Platz, as County Treasurer, Clay County, Nebraska; Joe Sedlacek, as County Treasurer, Colfax County, Nebraska; W. L. McCandless, as County Treasurer, Custer County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Fred A. Neeland, as County Treasurer, Dawes County, Nebraska; Irene Lamna, as County Treasurer, Dawson County, Nebraska; O. A. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; M. L. Endres, as County Treasurer, Douglas County, Nebraska; F. K. Fisk, as County Treasurer, Dundy County, Nebraska; Lester S. Donisthorpe, as County Treasurer, Fillmore County, Nebraska; Emil Nelson, as County Treasurer, Franklin County, Nebraska; George Wagner, as County Treasurer, Frontier County, Nebraska; J. H. Scott, as County Treasurer, Furnas County, Nebraska; J. A. Barnard, as County Treasurer, Gage County, Nebraska; F. M. Smith, as County Treasurer, Garfield County, Nebraska; J. H. Furrow, as County Treasurer, Gosper County, Nebraska; C. O. Jones, as County Treasurer, Grant County, Nebraska; J. L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Gus E. Neumann, as County Treasurer, Hall County, Nebraska; T. E. Toof, as County Treasurer, Hamilton County, Nebraska; J. K. Richmond, as County Treasurer, Harlan County, Nebraska; Joseph M. Crosby, as County Treas-

urer, Hayes County, Nebraska; Robert R. Knowles, as
4 County Treasurer, Hitchcock County, Nebraska; R. E. Gallagher, as County Treasurer, Holt County, Nebraska; George F. Gruenig, as County Treasurer, Hooker County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; J. A. Lawrence, as County Treasurer, Johnson County, Nebraska; J. H. Jensen, as County Treasurer, Kearney County, Nebraska; William Albert, as County Treasurer, Lancaster County, Nebraska; S. M. Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Mabel J. Thompson, as County Treasurer, Morrill County, Nebraska; Earl Conner, as County Treasurer, Nemaha County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; F. R. Ross, as County Treasurer, Otoe County, Nebraska; M. L. Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl E. Peterson, as County Treasurer, Phelps County, Nebraska; C. F. Story, as County Treasurer, Pierce County, Nebraska; A. J. Krzycki, as County Treasurer, Platte County, Nebraska; J. W. Fillman, as County Treasurer, Polk County, Nebraska; J. W. Nutt, as County Treasurer, Red Willow County, Nebraska; O. O. Marsh, as County Treasurer, Richardson County, Nebraska; O. J. Kubicek, as County Treasurer, Saline County, Nebraska; J. P. Spearman, as County Treasurer, Sarpy County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; A. R. Downar, as County Treasurer, Scotts Bluff County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Bruce H. Hewett, as County Treasurer, Sheridan County, Nebraska; F. A. Grow, as County Treasurer, Sherman County, Nebraska; Fred W. Meyer, as County Treasurer, Sioux County, Nebraska; Elmo B. Roper, as County Treasurer, Thayer County, Nebraska; Nick J. Wirz, as County Treasurer, Thomas County, Nebraska; Guy G. Griffin, as County Treasurer, Thurston County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; R. G. Allen, as County Treasurer, Washington County, Nebraska; Frank Starr, as County Treasurer, Webster County, Nebraska; C. J. Brown, as County Treasurer, Wheeler County, Nebraska; F. L. Propst, as County Treasurer, York County, Nebraska.

Substituted Parties Defendant, as follows:

5 Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County,

Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Bichall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cedarholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska, T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska, Appellees.

Pleas before Honorable Robert E. Lewis, Circuit Judge; Honorable Thomas C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, sitting in the District of Nebraska, at the October term of Lincoln Division of said District of Nebraska, begun October 2, 1922.

Appearances:

For appellant: Byron Clark, Esq., 10th & Farnam Sts., Omaha, Nebr. Jesse L. Root, Esq., 10th & Farnam Sts., Omaha, Nebr. J. Weingarten, Esq., 10th & Farnam Sts., Omaha, Nebr. Bruce Scott, 547 West Jackson Blvd., Chicago, Ill., of Counsel.

For appellees: O. S. Spillman, Attorney General, Capitol, Lincoln, Nebr. Hugh Lamaster, Ass't Attorney General, Capitol, Lincoln, Nebr.

Be it remembered, That at a District Court of the United States for the District of Nebraska, at the October 1922 Term at Lincoln Division thereof, begun on the 2d day of October, 1922, before Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas

C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, sitting within the said District of Nebraska, proceedings were had and done on the respective days hereinafter mentioned, in the matter of Chicago, Burlington and Quincy Railroad Company versus W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, and others, that is to say:

8 In United States District Court.

PETITION IN EQUITY.

[Filed November 22, 1922.]

And as Amended by Interlineation Pursuant to Leave Granted Prior to Hearing on the Application for Interlocutory Injunction.

To the Honorable the Judge of the District Court of the United States in and for the District of Nebraska:

Comes now the plaintiff, and for cause of action alleges:

I.

Plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago, in Cook County, in said state, and is and was during all the times hereinafter referred to a citizen and a resident of the State of Illinois, and a non-resident of the State of Nebraska. Plaintiff was organized for the purpose of transacting the business of a common carrier of passengers and freight by rail in the States of Illinois, Iowa, Nebraska and other states, and that it owns and operates as such carrier lines of railroad in the States of Illinois, Iowa, Wisconsin, Minnesota, Missouri, Kansas, Nebraska, Colorado, South Dakota, Wyoming and Montana, and in all these states is and during all the times in the petition referred to was engaged in interstate commerce.

II.

That the defendant, W. H. Osborne, Jr., is the duly appointed, qualified and acting Tax Commissioner of the State of Ne-
9 braska, and is a citizen and resident of said State, and is and has been such citizen and resident of said State during all of the time hereinafter complained of; that H. C. Haverly is the duly elected, qualified and acting County Treasurer of the County of Adams, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State of Nebraska; that G. E. Thornton is the duly elected, qualified and acting County Treasurer of the County of Antelope, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State of Nebraska; that George C. Waters is the duly elected, qualified and acting

County Treasurer of the County of Blaine, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. W. Irish is the duly elected, qualified and acting County Treasurer of the County of Box Butte, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that G. E. Haase is the duly elected, qualified and acting County Treasurer of the County of Buffalo, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred E. Ericson is the duly elected, qualified and acting County Treasurer of the County of Burt, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that P. A. Tomek is the duly elected, qualified and acting County Treasurer of the County of Butler, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that Mike Tritsch is the duly elected, qualified and acting County Treasurer of the County of Cass, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. O. Robinson is the duly elected, qualified and acting County Treasurer of the County of Cedar, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Mrs. A. B. Grant is the duly elected, qualified and acting County Treasurer of the County of Chase, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that M. Lancaster is the duly elected, qualified and acting County Treasurer of the County of Cheyenne, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that H. J. Platz is the duly elected, qualified and acting County Treasurer of the County of Clay, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joe Sedlacek is the duly elected, qualified and acting County Treasurer of the County of Colfax, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that W. L. McCandless is the duly elected, qualified and acting County Treasurer of the County of Custer, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Walter E. Miller is the duly elected, qualified and acting County Treasurer of the County of Dakota, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred A. Neeland is the duly elected, qualified and acting County Treasurer of the County of Dawes, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Irene Lamma is the duly elected, qualified and acting County Treasurer of the County of Dawson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State, that O. A. Butler is the duly elected, qualified and acting County Treasurer of the County of Dixon, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joseph Roberts is the duly elected, qualified and acting County Treasurer of the County of Dodge, Nebraska, and is and has been during all of the year A. D.

1922 a citizen and resident of said State; that M. L. Endres
12 is the duly elected, qualified and acting County Treasurer of the County of Douglas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. K. Fisk is the duly elected, qualified and acting County Treasurer of the County of Dundy, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Lester S. Donisthorpe is the duly elected, qualified and acting County Treasurer of the County of Fillmore, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Emil Nelson is the duly elected, qualified and acting County Treasurer of the County of Franklin, Nebraska and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that George Wagner is the duly elected, qualified and acting County Treasurer of the County of Frontier, Nebraska, and is and has been during all of the year A. D. — a citizen and resident of said State; that J. H. Scott is the duly elected, qualified and acting County Treasurer of the County of Furnas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. A. Barnard is the duly elected, qualified and acting County Treasurer of the County of Gage, Nebraska, and is and
13 has been during all of the year A. D. 1922 a citizen and resident of said State; that F. M. Smith is the duly elected, qualified and acting County Treasurer of the County of Garfield, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. H. Furrow is the duly elected, qualified and acting County Treasurer of the County of Gosper, Nebraska and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. O. Jones is the duly elected, qualified and acting County Treasurer of the County of Grant, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. L. Fitzpatrick is the duly elected, qualified and acting County Treasurer of the County of Greeley, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Gus E. Neumann is the duly elected, qualified and acting County Treasurer of the County of Hall, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that H. E. Toof is the duly elected, qualified and acting County Treasurer of the County of Hamilton, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. K. Richmond is the duly elected, qualified and acting County Treas-
14 urer of the County of Harlan, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Joseph M. Crosby is the duly elected, qualified and acting County Treasurer of the County of Hayes, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Robert R. Knowles is the duly elected, qualified and acting County Treasurer of the County of Hitchcock, Nebraska, and is and has been during all of the year A. D. 1922 a resident and citizen of said State; that R. E. Gallagher is the duly elected, quali-

fied and acting County Treasurer of the County of Holt, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that George F. Gruenig is the duly elected, qualified and acting County Treasurer of the County of Hooker, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that John A. Frandsen is the duly elected, qualified and acting County Treasurer of the County of Howard, Nebraska and is and has been during all of the year A. D. 1922, a resident and citizen of said State; that E. L. Jenkins is the duly elected, qualified, and acting County Treasurer of the County of Jefferson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of the said State; that J. A. Lawrence is the duly elected, qualified and acting County Treasurer of the County of Johnson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. H. Jensen is the duly elected, qualified and acting County Treasurer of the County of Kearney, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that William Albers is the duly elected, qualified and acting County Treasurer of the County of Lancaster, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that S. M. Souder is the duly elected, qualified and acting County Treasurer of the County of Lincoln, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Emil Hansen is the duly elected, qualified and acting County Treasurer of the County of Merrick, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Mabel J. Thompson is the duly elected, qualified and acting County Treasurer of the County of Morrill, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Ear Conner is the duly elected, qualified and acting County Treasurer of the County of Nemaha, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Belle Galley is the duly elected, qualified and acting County Treasurer of the County of Nuckolls, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. R. Roos is the duly elected, qualified and acting County Treasurer of the County of Otoe, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that M. L. Flanagin is the duly elected, qualified and acting County Treasurer of the County of Pawnee, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that Mary J. Ford is the duly elected, qualified and acting County Treasurer of the County of Perkins, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Carl E. Peterson is the duly elected, qualified and acting County Treasurer of the County of Phelps, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. F. Story is the duly elected qualified and acting County Treasurer of the County of Pierce, Nebraska, and is and has

been during all of the year A. D. 1922, a citizen and resident of said State; that A. J. Krzyeki is the duly elected, qualified and acting County Treasurer of the County of Platte, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that J. W. Fillman is the duly elected, qualified
17 and acting County Treasurer of the County of Polk, Nebraska, and is and has been during all of the year A. D. 1922, a citizen and resident of said State; that J. W. Nutt is the duly elected, qualified and acting County Treasurer of the County of Red Willow, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that O. O. Marsh is the duly elected, qualified and acting County Treasurer of the County of Richardson, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that O. J. Kubicek is the duly elected, qualified and acting County Treasurer of the County of Saline, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that J. P. Spearman is the duly elected, qualified and acting County Treasurer of the County of Sapry, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that George F. Bartek is the duly elected, qualified and acting County Treasurer of the County of Saunders, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that A. R. Downar is the duly elected, qualified and acting County Treasurer of the County of Scotts Bluff, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Agnes J. Pence is the duly elected, qualified and
18 acting County Treasurer of the County of Seward, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Bruce H. Hewett is the duly elected, qualified and acting County Treasurer of the County of Sheridan, Nebraska, and is and has been during all of the said year A. D. 1922 a citizen and resident of said State; that F. A. Grow is the duly elected, qualified and acting County Treasurer of the County of Sherman, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Fred W. Meyer is the duly elected, qualified and acting County Treasurer of the County of Sioux, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Elmo B. Roper is the duly elected, qualified and acting County Treasurer of the County of Thayer, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Nick J. Wirz is the duly elected, qualified and acting County Treasurer of the County of Thomas, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Guy G. Griffin is the duly elected, qualified and acting County Treasurer of the County of Thurston, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Lafe Paist is the duly elected qualified and acting County
19 Treasurer of the County of Valley, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of

said State; that R. G. Allen is the duly elected, qualified and acting County Treasurer of the County of Washington, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that Frank Starr is the duly elected, qualified and acting County Treasurer of the County of Webster, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that C. J. Brown is the duly elected, qualified and acting County Treasurer of the County of Wheeler, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that F. L. Propst is the duly elected, qualified and acting County Treasurer of the County of York, Nebraska, and is and has been during all of the year A. D. 1922 a citizen and resident of said State; that

III.

That this is a suit of civil nature in equity involving an amount against each defendant jointly and severally, exclusive of interest and costs exceeding the sum or value of Three Thousand and no/100 Dollars ($3,000.00), and is a controversy wholly between the plaintiff, a citizen and resident of the State of Illinois, and the defendants, each and all of whom are citizens and residents of the State of Nebraska,

IV.

That the claims and causes of actions involved in this suit arise under and involve the construction and application of the Fifth and Fourteenth Amendments to the Constitution of the United States, providing, amongst other things, that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation and that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and plaintiff claims protection of said Amendments to the Constitution of the United States, against the unlawful acts of the defendants hereinafter set forth.

V.

Plaintiff further alleges that this is a suit in equity to enjoin the collection of illegal taxes levied against plaintiff and its property; these taxes are illegal because the property of plaintiff has been valued for taxing purposes at more than its true value, while the property of all other tax payers in the state and particularly real estate, has been systematically, intentionally and continuously valued at but a fraction of its true value, thereby resulting in a discrimination against the plaintiff, and depriving it of the equal protection of the law, in violation of sections 1 and 4 of Article VIII of the Constitution of the State of Nebraska, and the statutes of said

state, and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and of the Third Subdivision of section four of the Enabling Act of Congress passed April 19, 1864, by the Congress of the United States, to enable the people of Nebraska to form a constitution and state government, and for the admission of said state into the Union on an equal footing with the original states.

VI.

Plaintiff further alleges that on the 19th day of April, 1864, the Congress of the United States passed an act to enable the people of Nebraska to form a constitution and state government and for the admission of such state into the Union on an equal footing with the original states. (p. 47 Vol. 13 U. S. Sta. at Large.) (Compiled Statutes, 1922, Page 29.) In the Third Subdivision of Section Four of this Act it was provided, amongst other things, that the Constitution of said State should provide by an article forever irre-
22 vocable without the consent of the Congress of the United States that the people inhabiting said territory do agree and declare:

"That the lands belonging to citizens of the United States residing without the said State, shall never be taxes higher than the land belonging to residents thereof."

The people of the then territory of the State of Nebraska, duly assembled, did prepare and adopt a constitution and submitted the same to the electors of said territory to be adopted or rejected. The said constitution was duly adopted by the electors of said State, and was approved by the Governor of the territory of Nebraska, February 9, 1866, and is known as the Constitution of the State of Nebraska of 1866. Amongst other things it was provided in Article XI of said Constitution in section six thereof, that:

"This constit-ion is formed, and the State of Nebraska asks to be admitted into the Union on an equal footing with the original states, on the condition and faith of the terms of the propositions stated and specified in an act of congress, approved April 19, 1864, authorizing the people of the territory to form a constitution and state government; the people of the State of Nebraska hereby accepting the conditions in said act specified."

Whereby the provisions and conditions of the Enabling Act of Congress above referred to, became a part of the organic law of the State of Nebraska, irrevocable excepting by the consent of the Congress of the United States.

23 Two constitutions were subsequently adopted by the people of the State of Nebraska; one in 1875 and the one now in effect, in 1919. But plaintiff alleges that the Congress of the United States has not consented that the lands belonging to citizens of the United States residing without said State shall be taxed higher than

the land belonging to residents of the State of Nebraska, and plaintiff further invokes the protection of the provisions of the Enabling Act referred to as adopted and ratified by the electors of the State of Nebraska, evidenced in the constitution of 1886, Pg. 51 Gen. Stat. of Neb. 1873.

Plaintiff further alleges that including branches and spurs, there are 6,457.9 miles of railway owned and operated by various railroad corporations in the State of Nebraska, of which but 798.12 are owned by corporations, citizens and residents of the State of Nebraska; that of such mileage plaintiff owns and operates 2,861.6 miles, and the 3,659.78 miles remaining, after deducting the mileage owned by residents of the State of Nebraska, are all owned and operated by non-residents of the State of Nebraska, citizens and residents of states other than the State of Nebraska. That a great part of the property of the carriers, particularly of plaintiff, thus owned and operated with the State of Nebraska, consists of real estate and its appurtenances.

VII.

Plaintiff further alleges that involved in this case for reference and application the more material sections of the statute are referred to by their serial number as contained in the Compiled Statutes, 1922. The constitutional provisions, Federal and State, other than the Constitution of 1866, are contained in said Statutes. The provisions of the Constitution of 1866 referred to are contained in the General Statutes of Nebraska, 1873. The sections are as follows:

Section 1 of Article XIII of the Constitution of Nebraska, Page 89:

"The necessary revenue of the State and its governmental subdivisions shall be raised by taxation in such manner as the legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the legislature."

It is further provided by Section 4 of Article VIII of the Constitution of Nebraska, Page 91:

"The legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or to any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever."

It is provided by Section 28 of Article IV of the Constitution of Nebraska, Page 74:

"A tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate. He shall have jurisdiction over

the administration of the revenue laws of the state, and together with the Governor, Secretary of State, State Auditor and State Treasurer shall have power to review and equalize assessments of property for taxation within the state. He shall have such other powers and perform such other duties as the Legislature may provide. His term of office and compensation shall be as provided by law."

It is provided in Section 5820, Page 1827, that:

"All property in this state, not expressly exempt therefrom shall be subject to taxation, and shall be valued and assessed at its actual value. 'Actual value' as used in this Act, shall mean its value in the market in the ordinary course of trade."

Section 5821 exempts from taxation property of the State and its governmental subdivisions, property owned by and used exclusively for agricultural and horticultural societies, owned and used exclusively for educational religious, charitable or cemetery purposes, if not owned or used for financial gain or profit, household goods of the value of $200 to each family, and increased value of land by reason of shade and ornamental trees planted along the highway.

Section 5822 provides:

"Taxes on all real property shall be a first lien thereon from and including the first day of December of the year in which they
26 are levied until the same are paid, except general city taxes on real property within the corporate limits of cities of the metropolitan class, which shall be a first lien thereon from and including the first day of May following the levy, until the same are paid."

Section 5823:

"Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid."

Section 5825:

"All general taxes due the state and its governmental subdivisions shall be a first lien on the real estate on which levied, and take priority over all other encumbrances and liens thereon."

Section 5827:

"The Tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate and shall receive Five Thousand Dollars per annum, and have jurisdiction over the administration of this Act and all the revenue laws of the state; subject to review by the State Board of Equalization and Assessment and together with the Governor, Secretary of State, State Auditor and State Treasurer, shall have power to review and equalize assessments of property for taxation within the state, and said officers collectively shall consti-

tute and be known as the State Board of Equalization and Assessment."

Section 5829:

"The form of all blanks, forms schedules, books of instruction, assessment and tax books, records and all other forms which may be necessary or expedient for the proper administration of this act, or of the revenue laws in general shall, on or before the fifteenth day of January of each year be approved by the tax commissioner, and all such schedules, forms and documents shall be uniform throughout the several counties in so far as the same is possible and practicable. The tax commissioner shall, on or before the first day of January of each year furnish the county clerk of each county forms for all schedules for the listing and assessment of personal property; and the county clerk of each county shall, on or before the first day of April in each fear cause to be printed a sufficient number of such schedules for the use of the county and deliver the same to the county assessor."

Section 5830:

"Whenever it shall be made to appear to the Tax Commissioner that any property has been improperly omitted from the tax list or assessment roll of any district or county for any year, or, if assessed, that the same has been undervalued, as compared with like property in the same county, or in the state, so that the assessment for such year in such district or county is grossly unfair or inequitable whether the same has been equalized by the county Board of Equalization or the State Board of Equalization and Assessment or not, he shall report the same to the State Board of Equalization and Assessment, and said Board shall examine into the facts, and shall cause to be served upon any person, company or corporation affected by such reassessment, an order to show cause why such reassessment should not be made; which order to show cause shall be served for a period of at least ten days prior to the date fixed for such hearing; and at such hearing if satisfied that it would be for the best interest of the state that reassessment of such property be made, said board may appoint a Special Assessors as may be necessary to cause a reassessment to be made of all or any real and personal property, or either, in any such district or county as to them may seem proper, to the end that all property in such district or county shall be assessed, equitably as compared with like property in such district, county or state. Provided, however, that no such action shall be taken by the Tax Commissioner, or others under the provisions hereof, unless the same be commenced by December first, next following the date of the original assessment. Provided, further, however, that no land shall be re-assessed under the provision of this section where the same shall have changed ownership otherwise than by will, inheritance or gift. Provided, further, that where an appeal has been taken from the original assessment and an adjudication thereof had by the court, such adjudication shall be final and not subject to modification by re-assessment."

Sections 5839 and 5840, provide:

"The State Board of Equalization and Assessment is hereby
28 empowered, and it is made its duty, to assess all property of the railroads and railroad corporations in the State of Nebraska, Provided, however, that all machine repair shops, general office buildings, store houses, and also all real and personal property outside of right of way and depot grounds, as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property."

"The Board on the first Monday of May of each year shall proceed to ascertain all property of any railroad company owing, operating or controlling any railroad or railroad service in this state, which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, warehouse tracks, roadbed, right of way and depot grounds, and all water and fuel stations, buildings and super-structures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided."

Complainant further alleges that Sections 5841, 5842 and 5843 provide:

"Section 5841: On or before the fifteenth day of April in each year, the person, company, or corporation owning operating or controlling any railroad or railroad service in this state, shall, by its president, secretary or principal accounting officer, return to the state Board of equalization and assessment a sworn statement or schedule of the property of such company on the thirty-first day of March preceding."

and then prescribed specifically the facts which shall be set forth in said report.

29 Sec. 5842. "The returns of railroad companies or corporations shall not be held to be conclusive as to the value of the property, but the state board of equalization and assessment shall, from all the information which it is able to obtain, include records of the railway commission on other regulatory body, find the true value of all such property, including tangible property and franchises and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile shall be determined by dividing the whole value by the number of miles of the main track of each road or line."

Section 5843: provides a penalty for the failure of any company to make the return required by Section 5841:

Complainant further alleges that Sections 5844 to 5850, provide:

"Any railroad company operating any road within the State of Nebraska shall annually, on or before the first day of April report to the County Clerk of each county through which its line of road runs the number of miles of main track situated within each governmental subdivision in the county, together with all machine and repair shops general office buildings, store houses, and all real and personal property not on the right of way."

"The State Board of Equalization and Assessment shall have power to require the attendance before it of any officer, agent or servant of any railroad or railway company having any portion of its property in this state, to answer under oath such questions touching said property as may be propounded by the Board. The Board shall have power to issue whatever notice or process may be necessary to compel the attendance of such person as a witness, which process may be served by any person deputed by the Board for that purpose. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by the Board shall forfeit the sum of five hundred dollars, to be recovered in a civil action prosecuted in the name of the state."

"Any officer, agent or servant of any railroad company, or other person, who shall knowingly make any false answer to any question put to him by such Board, or in its behalf, touching the property, business, money and credits, or value thereof, of such company, shall be guilty of perjury."

"The State Board of Equalization and Assessment after having valued and assessed all the railroad property in this state in accordance with the provisions of this article, shall immediately make return to the County Clerk of each and every county in which any portion of the railroad property as designated in this article may be located, to be used as the basis of levy for the county and governmental subdivisions through which any railroad or part thereof may extend."

"Such return shall include the following:

(1) Number of miles of track of each railroad located in each governmental subdivision in the county, and the total length of such road in the county:

(2) The average valuation per mile of such road;

(3) The valuation that shall be placed to the credit of such governmental subdivision in the county."

"The State Board shall transmit to each county as soon as practicable after receiving returns from the railroad company, a statement from such returns showing as to each county and railroad all machine and repair shops, general office buildings, store houses, and also all real and personal property outside of such railroad right of way, and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assess-

ment, and in what governmental subdivision located, which return shall be for the benefit of the county board and local assessors."

"Railroad property assessed by the State Board shall be apportioned by the County Clerk among the respective governmental subdivisions in which the same may be entered on the tax list and collected by the County Treasurer."

31 Plaintiff further alleges that Sections 5901, 5904 and 5905 provide:

"The State Board of Equalization and Assessment shall, on the first Monday of July of each year, meet at the state capitol for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including the railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county or tax district, and such increase or decrease shall be made by a percentum, and the per cent of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected an amount equal to the per cent of increase or decrease fixed by the state board. The state board shall have the power in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property in any county or tax district, whenever in their judgment it shall be necessary to make such assessment conform to law; and such increase or decrease, when made, shall be certified to the county clerk and by the county clerk extended upon the tax rolls, as hereinbefore provided; but in the extension of valuations the county clerk shall reject all such amounts as may fall below two dollars and fifty cents and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple thereof, this making all valuations end in cipher or five. In the event it shall appear to the state board of equalization and assessment that a just equitable and legal assessment of the property in the state cannot be made without increasing or decreasing the valuation as returned by any county, the board of equalization and assessment shall issue a notice to the counties which the board deems either under-valued or over-valued and shall set a date for hearing at least five days following the mailing of such notice. At such hearing legal representatives of the counties may appear and show cause why the valuation or valuations of their county should not be increased or decreased by the State Board, and after a full hearing, the
32 state board shall enter its order and certify the same to the county clerks of the proper counties as hereinbefore set forth in this section. The notice provided for in this section shall be mailed to the county clerk, county assessor, and chairman of the County Board. From any final decision of the state board of equalization and assessment, any person, county or municipality affected

thereby may prosecute a writ of error to the supreme court and upon demand therefor the state board shall prepare and certify a transcript of its records and proceedings involved in such decision, upon payment by the party demanding the same of a fee of ten cents for each one hundred words. Notice of intention to obtain a review shall be filed within ten days from the date of the entry by the board, and when docketed said cause shall be given precedence by the supreme court over all civil cases."

Sec. 5904. "The state board shall determine the amount of all taxes required for state purpose, and the rate of taxation upon all tangible property in the state necessary to raise the same, and make a levy of such taxes throughout the state. The rate of the general tax on tangible property together with the state tax on intangible property shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, and an additional sum not exceeding twenty per cent. of the amount of any existing state indebtedness."

Sec. 5905. "On or before the second day of August in each year the state board shall transmit to the county clerk of each county a statement of the rate of taxation required for the general state tax, the state school tax and any other general or special taxes, as directed to be levied and collected by the state board."

Complainant further alleges that Section 5996 provides:

"The county treasurers of the several counties of this state shall be ex-officio county collectors of all taxes levied within their respective counties. No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the treasurer's office and pay his taxes."

33 Sections 5997 to 6017, inclusive, prescribe a procedure to be followed by the treasurer in collecting all taxes and authorizes him to issue distress warrants for the collection of taxes, in which the personal taxes become delinquent on December 1st of each year.

VIII.

Plaintiff in accordance with the statutes of Nebraska made a report to the State Board of Equalization and Assessment and the county assessors, of the various counties in the state into or through which its lines of railway were constructed and are operated strictly in accordance with the law; that subsequently and on the 15th day of June, 1922, the State Board of Equalization and Assessment fixed the valuation to be assessed for taxing purposes at $137,589,782.00 on a basis of 2,861.6 miles of single track, the order being in the words and figures following to-wit:

"Office of the Governor, Lincoln, Nebraska, June 15th, 1922.

"The State Board of Equalization reconvened at the office of the Governor at 10:30 A. M., all members present, the Governor in the

chair. The question of railroad values for the year 1922 was then discussed by the Board, and the following resolution was unanimously adopted. Resolved, That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by
34 the several railroad companies and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain, do hereby ascertain, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.
Chicago, Burlington & Quincy	2,861.60

Total Actual Valuation: $137,589,782.00.

That subsequently and during the meeting of the State Board, as provided by Section 5901, the said Board by complaint was notified that the assessing officers and Equalization Boards in their respective counties for taxation purposes for the year 1922 assessed all property within their jurisdiction at not to exceed fifty per cent of the actual value of such property. That the said State Board then well knew that the constitution and laws of Nebraska provided that all property in the state subject to taxation should be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property not exempted by
35 law from taxation; that if the valuation of complainant's property in 1922 for taxation purposes should not be reduced to the same percentage of value that other property subject to taxation in said state has been valued for assessment purposes by the several county assessors and board of equalization in 1922, or unless the valuation of all other such property should be increased from fifty per cent of its value to its actual value, that is the valuation should be doubled, complainant would be denied the equal protection of the law guaranteed by the Constitution of the United States and the State of Nebraska, and its property would be taken for public purposes without just compensation and without due process of law, in derogation of the Fifth and Fourteen- amendments to the Constitution of the United States, and of sections 3 and 21 of Article 1 of the Bill of Rights of the Constitution of the State of Nebraska.

That notwithstanding all of said knowledge and notice of inequality of the assessment of carrier's property as compared with that of all other classes of property the said State Board at its meeting made no change in the assessment of the value of your complainant's property either by reducing it to the same basis as that upon which all other property was valued nor by increasing the assessed value of all other property to its actual value as required by the constitution and laws of the State but did make some slight material equal-
36 izations as between counties and by its final decision and resolution as of August 2nd, 1922, intentionally maintained and preserved the inequalities in valuation of the several classes of property and retained the valuation of your complainant's property at 137% of its actual value while in the final adjustment all other property in the State of Nebraska (including real estate) was assessed not to exceed sixty-five per cent of its actual value. The said State Board thereupon determined the amount of all taxes required for state purpose and made a levy therefor of such as were within its jurisdiction.

IX.

Plaintiff further alleges that pursuant to Section 5905 aforesaid the State Board complied therewith and immediately on said August 2nd, 1922 certified said levy and the results of its equalization to the respective county clerks and deprived plaintiff of any opportunity of either adopting or pursuing any legal procedure to review the acts of said State Board either by error or praying for an injunction against its illegal acts as herein set forth or otherwise.

Plaintiff further alleges that the valuation per mile of plaintiff's property so fixed by the State Board of Equalization and Assess-
ment was forthwith by the county clerks transcribed upon the
37 tax lists of their respective counties against plaintiff and its property; that the valuation per mile so illegally fixed by the State Board of Equalization and Assessment by the county clerks has been applied per mile to the levies provided by law for raising revenue for state, county, township, school district, and other purposes, and the county treasurers will force plaintiff to pay those taxes on said grossly excessive and unlawful valuations unless restrained by the order of this Court.

That the treasurers defendant are not authorized to accept any tender made by plaintiff of the portion of the taxes which plaintiff acknowledges to be due but by law must collect the full amount certified to them.

That the said taxes became a lien on plaintiff's property on November 1st and will be due and delinquent December 1st, 1922, and that said defendants are now demanding payment of said taxes in full. Plaintiff alleges that no complaint is made herein as to taxes levied for city and village purposes.

X.

Plaintiff further alleges that the defendant Tax Commissioner, W. H. Osborne, Jr., and the State Board of Equalization and Assess-

ment have notwithstanding plaintiff's yearly complaint, continually decreased annually the assessed value of all property other than Railroad property, but more particularly for this suit commencing with the year A. D. 1920, and during said time has likewise
38 continually increased the valuation of plaintiff's property within the State of Nebraska, which is accurately described by the following figures:

Total Value of Land and Improvements in Nebraska:

Year 1920, $2,144,472,350.00 being 68% of its actual value.
Year 1921, 1,831,048,877.00 being 53% of its actual value.
Year 1922, 1,753,312,309.00 being 62% of its actual value.

C. B. & Q. total valuation for said years are:

Year 1920	$131,755,655.00
Year 1921	131,755,725.00
Year 1922	137,589,782.00

That during each of said years the actual value of plaintiff's property in the State of Nebraska did not exceed $100,000,000.00.

The actual result being that the lands and all other property did not pay taxes to exceed 50% of their actual value and will not exceed 65 per cent for the year A. D. 1922; while this plaintiff will, if the assessment now complained of is permitted to stand, pay taxes at 137% of its actual value.

XI.

Now comes the plaintiff and — leave of court amends its Bill by substituting for paragraph XI, page 27, the following:

Plaintiff alleges that its railroad extends through the following counties in the State of Nebraska, and that the amount of the tax levied upon the valuation herein complained of and the il-
39 legal .5255 percentage thereof in each county resulting from the wrongful scheme and rule valuation, which the respective treasurer of each county, defendant herein, is demanding and threatening to collect with the legal portion, in the performance of their alleged respective duties, are set forth in the columns following, to-wit:

County.	Tax levied.	Illegal part.
Adams	$41,507.93	$21,812.42
Antelope	8,660.55	4,551.12
Blaine	18,631.91	9,791.07
Box Butte	39,489.07	20,751.48
Buffalo	16,134.34	8,478.60
Burt	8,536.14	4,485.74
Cass	33,922.44	17,826.24
Cedar	6,115.01	3,213.44
Chase	9,413.41	4,946.75
Cheyenne	19,200.37	10,089.79

County.	Tax levied.	Illegal part.
Clay	43,618.56	22,921.55
Colfax	1,489.61	782.79
Custer	61,138.76	32,128.42
Dakota	12,707.13	6,677.60
Dawes	23,755.86	12,483.71
Dawson	1,486.99	781.41
Dixon	10,135.11	5,326.00
Dodge	15,477.62	8,133.49
Douglas	14,508.03	7,623.97
Dundy	50,971.05	26,785.29
Fillmore	53,768.21	28,255.19
Franklin	36,310.91	19,081.38
Frontier	20,481.78	10,763.18
Furnas	51,165.77	26,887.61
Gage	51,430.94	27,026.96
Garfield	1,572.57	826.39
Gosper	10,565.71	5,552.28
Grant	23,312.07	12,250.49
Greeley	18,927.49	9,946.40
Hall	19,328.98	10,157.38
Hamilton	26,727.49	14,045.30
Harlan	66,728.73	35,065.95
Hayes	3,657.76	1,922.15
Hitchcock	44,871.83	23,580.15
Holt	8,904.30	4,679.21
Hooker	25,441.01	13,369.25
Howard	14,706.43	7,728.22
99 Jefferson	23,319.62	12,254.46
Johnson	28,172.00	14,804.38
Kearney	38,350.86	20,153.37
Lancaster	71,540.18	37,594.36
Lincoln	34,891.20	18,335.32
Merrick	9,709.18	5,102.17
Morrill	28,703.66	15,083.77
Nemaha	14,265.39	7,496.46
Nuckolls	26,166.26	13,750.31
Otoe	18,718.08	9,836.35
Pawnee	25,722.12	13,516.97
Perkins	25,272.56	13,280.73
Phelps	31,693.22	16,654.78
Pierce	8,471.05	4,451.53
Platte	2,489.35	1,308.15
Polk	1,165.48	612.45
Red Willow	58,486.17	30,734.48
Saline	48,741.51	25,613.66
Sarpy	34,965.27	18,374.24
Saunders	42,247.78	22,201.20
Scotts Bluff	25,133.48	13,207.64
Seward	27,448.81	14,424.34

County.	Tax levied.	Illegal part.
Sheridan	35,626.58	18,721.76
Sherman	26,522.10	13,937.36
Sioux	10,630.76	5,586.46
Thayer	24,471.39	12,859.71
Thomas	32,323.45	16,985.97
Thurston	13,544.89	7,117.83
Valley	15,015.67	7,890.73
Webster	37,728.55	19,826.45
Wheeler	1,649.44	866.78
York	25,761.76	13,537.80

Because of official tax statements not being received for the year 1922 plaintiff on information and belief alleges that for the year 1922, the taxes for the two following counties with the illegal portion will appear as follows:

County.	Tax levied.	Illegal part.
Butler	$15,000.00	$7,882.50
Richardson	35,000.00	13,392.50

Endorsed on margin: "Amended by leave given December 2, 1922."

41 XII.

Plaintiff further alleges that the State Board in its resolution adopted on June 15th, 1922, valuing and assessing plaintiff's property in Nebraska, recites that there was considered, with other classes of property, plaintiff's moneys, credits, net earnings, dividends paid, the capital stock and market value thereof. That as to this plaintiff alleges that it has a value composed of property consisting of credits, investments and securities of various designations which are held by it and which have no relation to the operation of the railroad in Nebraska or elsewhere, nor has it added to the value of the road or the rights by it exercised in the State of Nebraska either for the year 1922 or prior years. It also has a definite situs in other states and for the year A. D. 1922 it was there subject to assessment and taxation separately and apart from the railroad at the places where it was assessable and taxable in conformity to the laws of the respective states where such properties are situated, they being as follows:

	Estimated value.
Elevator Investments, Chicago and Burlington...	$326,844.59
Coal Investments, Illinois	3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control.....	27,922,783.87
Cash & Cash Assets—Balance	7,104,797.46
Local property, Illinois	11,500,000.00
Local property, Iowa	645,000.00
42 Local property, Iowa (Woodbury County)..	13,820.00
Local property, Wisconsin	48,000.00
Local property, Minnesota	77,500.00
Local property, Missouri	7,867,500.00
Local property, Kansas	267,300.00
Local property, Nebraska	2,171,884.00
Local property, South Dakota	35,320.00
Local property, Wyoming	152,200.00
Local property, Colorado	516,150.00
North Platte to Bridgeport, Nebraska	229,327.00
	$73,677,476.14

Includes cost of Colorado & Southern Ry. Stock, $19,643,451.88. That all of said properties and the income therefrom are reflected in the market value of plaintiff's stocks, bonds, surplus and dividends, and the value of said property so elsewhere assessable and taxable for the year A. D. 1922 aggregates $73,677,476.14. That to aid the Board in arriving at a just valuation of plaintiff's property within the State of Nebraska plaintiff with other items submitted the foregoing items of property situate beyond the State of Nebraska and that locally assessed in Nebraska and beyond the Board's jurisdiction, but notwithstanding said statement so furnished, it intentionally, systematically but erroneously included said property in ascertaining and assessing the value of your plaintiff's property for said year 1922, and likewise for the years A. D. 1920 and 1921. That the same was included within said valuation or that percentage thereof which the said State Board took as representing the prorata
43 therein, which should be taken as the value of plaintiff's property in the State of Nebraka for each of the aforesaid years. In this your plaintiff further alleges that in so far as said properties were considered by the State Board and taken as a part of the valuation of plaintiff's property, their action was illegal and void and that the value of said properties in the aforesaid sum should have been deducted before ascertaining and assessing that part of the value which belonged to the State of Nebraska. That plaintiff is entitled to a reduction of its valuation so made by the State Board for taxation by the percentage allocated to the State of Nebraska by the Board which plaintiff alleges is not less than twenty-three per cent for the year A. D. 1922., or a total of $16,945,819.00.

XIII.

Plaintiff further states that the State Board of Equalization and Assessment and the several county assessors and county boards of equalization of the state of Nebraska, have for many years last past assessed and valued farm land in the state of Nebraska at much less than the true value thereof; that the provision in the statutes of Nebraska that the real estate shall be assessed separately from the improvements thereon, permits the local assessors and taking officers to and on information and belief plaintiff alleges that they almost uniformly do assess the improvements at but a small fraction
44 of their actual value, to wit, not to exceed ten to twenty-five per cent of their actual value, and where buildings thereon, frequently expensive in character, are constructed upon land, the local assessors for years have ignored such improvements, and do not assess them at all. That during the year 1920 farm lands in the State of Nebraska constituted more than fifty-five per cent of the value of all property in the state, other than railroad property, and the county assessors and the State Board of Equalization and Assessment fixed for taxing purposes the value of such real estate at but sixty-eight per cent of the true value of such farm land; that the valuation of farm land in the State of Nebraska as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization and Assessment for the year 1921 was fixed at but forty-seven per cent of the true value of said farm lands; that such under-valuations for taxing purposes by said officials was the result of a systematic, intentional, notorious and continuous undervaluation of farm lands by the several county assessors and the State Board of Equalization and Assessment for taxing purposes; that in 1922 all farm lands in the state of Nebraska were likewise undervalued for taxing purposes, and their valuation fixed at not to exceed 62 per cent of their true value by the local taxing authorities, and the State Board of Equalization and Assessment knowingly
45 and intentionally joined and participated in further pursuance of the scheme and plan that had obtained for many years, and yet obtains in the State of Nebraska, to undervalue farm lands for taxation for the purpose of relieving such lands of their just share of the taxing burden in the state by refusing to raise said valuation or to equalize it with the properties of your plaintiff. In that behalf plaintiff alleges that the defendant Osborne, as Secretary of the State Board of Equalization for the year 1920 published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation

established by almost 2,000 precinct assessors and in equalizing the land and improvements, between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ration process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth. Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ration process, based on bona fide sales from July 1, 1918 to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the meeting of the assessing officials of the counties held July 20, 1920. The ration process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years and Minnesota and other states have adopted the same plan.

Under this plan of equalization the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Boards averaged 68 per cent of the real value, as determined by the ration process, and the State Board adopted this 68 per cent as the basis for equalizing purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"Resolution adopted at State Assessors' meeting, March 18, 1921. At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

Minnesota ... St. Paul, Min.

'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

"It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

"Dated this 19th day of March, 1921. (Signed) G. L. Munford, Secretary-Treasurer."

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

48 "The above and foregoing is a verbatim copy of a resolution adopted by the County assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, but where the occasion demands, the State Board will not shirk its duty to fairly equitably raise of lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 53 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 53 per cent of the true value of real property in the State of Nebraska for the year 1921: the said concerated action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 53 per cent of the true value thereof, was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

49 That because the taxing authorities of the State of Nebraska were cognizant of the fact that the railroad companies of the State of Nebraska were making extensive investigations to bring into view the truth with respect to the undervaluation of farm lands in the State of Nebraska, the State Tax Commissioner, issued his instructions to county and precinct assessors in Nebraska in 1922, advising them that it was their duty, as follows:

"We will first take up the Rural Real Estate Assessment which must be made again this year. Those of you who are familiar with the old Revenue Law will recall that prior to 1921, real estate was only assessed once every four years but the Legislature of 1921 passed a law requiring that the new assessment pertaining to real estate should be made in 1921, again in 1922 and every two years thereafter. Real Estate generally was reduced approximately fifteen per cent uniformly over the State in the year 1921. This emergency legislation on the part of the Legislature was made in the hope that some relief could be given the owner of real property in the way of taxes, but such was not the case, for, notwithstanding the fifteen per cent reduction in the valuation of real property uniformly over the State, this reduction was not reflected in the real estate tax receipt, nor could it be, for the reason that there is obviously only one way to accomplish this result and that is lower the expenditures of the State and its taxing subdivisions. We are compelled to make another assessment of real estate this year, 1922, which will stand for two years or until 1924 when another assessment will be made. The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes, namely at its actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

Plaintiff alleges that the purpose and intent of issuing the instructions in the above form was to encourage county and precinct assessors to further depreciate the value of real estate for taxing purposes under the undervaluations of the preceding years, and that in harmony with such intent and instructions, the county assessors did further in 1922 undervalue farm lands for the purpose of taxation.

XIV.

Plaintiff further alleges that in accordance with Section 5977 the County Assessor of each county in the State of Nebraska prepared an abstract of the assessment rolls of his county, and forwarded it to the State Board of Equalization and Assessment before the 10th day of July, 1922; that said abstracts disclose the total number of acres of taxable land in each county; the aggregate assessed value of all taxable land; and the average assessed value per acre of all taxable land; and that said abstracts show, and the plaintiff alleges the fact to be, that there were at the times hereinbefore mentioned, and now are, in the State of Nebraska, Forty-six million Four Hundred Twenty-one Thousand Six Hundred Forty-seven (46,421,647) acres of taxable land.

Plaintiff further alleges that the said abstracts forwarded by the county assessors to the State Board of Equalization and Assessment also disclose the aggregate assessed value of all town lots and personal property in each county, and the total assessed value of all taxable property therein.

Plaintiff further alleges that in accordance with Section 5901 the State Board of Equalization and Assessment met at the

State Capitol in the month of July, 1922, and proceeded to examine the abstracts of property assessed for taxation in the several counties of the State, and did equalize such assessments as between counties, but that in such equalization the said Board made no substantial change in the aggregate assessed valuation of taxable land or other real estate or personal property.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is One Billion Seven Hundred Fifty-three million, Three Hundred Twelve Thousand, Three Hundred Nine Dollars ($1,753,312,309.00), and that the average assessed value per acre of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is Thirty-Seven and 77/100 Dollars ($37.77).

Plaintiff further alleges that the actual value of all taxable land and improvements thereon, in the State of Nebraska for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid sum, and that the actual value thereof in the
52 market in the ordinary course of trade was at least Two Billion Six Hundred Ninety-seven Million, Four Hundred Three Thousand, Five Hundred Fifty-one and no/100 Dollars (2,697,403,551.00), or at least Fifty-eight and 10/100 Dollars ($58.10) per acre.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all town lots, including improvements thereon, in the State of Nebraska for the year 1922 is Five Hundred Thirty-nine Million Seven Hundred Thirty Thousand Seven Hundred Eighty-five and no/100 Dollars ($539,730,785.00).

Plaintiff further alleges that the actual value of all town lots and improvements thereon, in said State of Nebraska for the year 1922 was and is in excess of the aforesaid equalized value and instead thereof the actual value in the market in the ordinary course of trade was at least Eight Hundred Thirty Million, Three Hundred Fifty-five Thousand Fifty-three and 80/100 Dollars ($830,355,053.80).

Plaintiff further alleges that the said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all personal property other than property subject to assessment by the State Board of Equalization and Assessment in the State of
53 Nebraska for 1922 is Five Hundred Thirty-one Million Two Hundred Forty-five Thousand One Hundred Eighty-six and no/100 Dollars ($531,245,186.00), that the actual value of all said personal property in said State for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid equalized value and instead thereof the actual value was at least Eight Hundred Seventeen Million Three Hundred Thousand Two Hundred Eighty-six and no/100 Dollars ($817,300,286.00).

Plaintiff further alleges that by the action of the assessors of the various counties of the State of Nebraska, and by the action of the State Board of Equalization and Assessment, the value of said taxable

d in the State of Nebraska so fixed for the purpose of assessment
d taxation as the basis or taxable value upon which to compute
es under the laws of the State of Nebraska, in truth and in fact
resents not to exceed Sixty-Five per cent (65%) of the real value
said taxable land in the market in the ordinary course of trade and
the reasonable value thereof; and plaintiff avers that the taxable
ds in the State of Nebraska constitute and comprise Fifty-Five per
t (55%) of the taxable property in the State of Nebraska subject
to assessment and taxation and comprise sixty-one per cent
(61%) of said taxable property exclusive of railroads.

Plaintiff further alleges that the value of its property in
State of Nebraska subject to assessment by the State Board of
alization and Assessment under the laws of the State of Nebraska,
s not exceed One Hundred Million Dollars ($100,000,000.00);
plaintiff owns and operates 2,861.60 miles of railroads in the
e of Nebraska and that the value of its said railroad property so
ject to assessment by said Board therefore does not exceed Thirty
r Thousand Nine Hundred Forty-Five and 45/100 Dollars
4,945.45) per mile; but this plaintiff avers that the taxable
e of its property subject to assessment by said Board under the
s of the State of Nebraska, when considered in the light of the
ssment of taxable land and other real and personal property,
ject property subject to assessment by the State Board of Equaliza-
n and Assessment, in said State, as hereinbefore averred, is not in
ss of Twenty-two Thousand Seven Hundred and Fourteen and
/100 Dollars ($22,714.54) per mile, aggregating $64,999,927.66
the State of Nebraska; and plaintiff avers that it is willing to, and
pay such lawful taxes as are levied upon said last aforesaid
or value per mile, or upon such other sum as this County may
ermine to represent the fair and equitable taxable value of its
property per mile as compared to the tax burdens imposed
upon taxable land in said State.

That the systematic assessment upon such basis is, and for
ny years past has been, a matter of public notoriety in the State;
the fact that such assessors have indulged in such habitual, in-
tional, systematic and general custom in so assessing taxable land
other real estate and personal property at materially less than its
e in the market in the ordinary course of trade, was known to the
e Board of Equalization and Assessment at and prior to the time
sessed plaintiff's property; that notwithstanding this knowledge
the part of the said State Board of Equalization and Assessment, it
ntionally assessed the plaintiff's property subject to assessment
t at One Hundred Thirty-Seven per cent (137%) of its actual
e.

XV.

Plaintiff further alleges that the action of the Board of Equaliza-
n and Assessment, and the several county assessors and county
rds of equalization in undervaluing farm lands for the purpose
xation pursuant to said intentional, concerted and pre-arranged
, while at the same time valuing the property of the plaintiff

at one hundred per cent and more of its true value for taxing purposes, constitutes an unlawful discrimination against plaintiff,
56 and compels it to bear more than its just proportion of the burden of taxation in the State of Nebraska in violation of the constitution and laws of the State of Nebraska, as above set forth, and in violation of the guarantees contained in the Enabling Act above referred to as ratified and confirmed by the electors of the State of Nebraska. That the action of the State Board of Equalization and Assessment, and of the several county authorities in intentionally and systematically undervaluing farm land, which constitute fifty-five per cent of the taxable property of the State, while requiring plaintiff to pay taxes on the full actual value and more of its property, constitutes an unjust and an unlawful discrimination against plaintiff, and denies to plaintiff the equal protection of the law guaranteed by the Constitution and laws of Nebraska, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and deprives plaintiff of its property without due process of law, takes its property for public use without compensation in violation of the Fourteenth Amendment to the Constitution of the United States.

XVI.

Plaintiff further alleges that the intentional and systematic undervaluation by the State Board of Equalization and the several
57 county assessors of farm lands within the State of Nebraska, being about fifty-five per cent of the total taxable property in said state, at only 62 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at one hundred thirty-seven per cent or more of its true value, and requiring plaintiff to pay taxes on said value constitutes and is an unlawful burden upon interstate commerce, in that more than 68 per cent of the commerce carried by plaintiff over the lines of its railroad in the State of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants, by said unlawful and intentional discrimination in valuation between plaintiff and other taxpayers in the State, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XVII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property in
58 the State at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but

plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only did not change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally co-operated with the said county assessors for the purpose of returning the value of farm property at only 62 per cent of the true value thereof for taxing purposes, while requiring the plaintiff to pay taxes upon more than the full actual value of its property within the state; that the said State Board further purposely and intentionally refused to correct an error in plaintiff's return to the State Tax Commissioner for the use of the State Board, which consisted of plaintiff's return on the prescribed forms of the State Board designated as Form "G" and Form "9" in that in Form "G" the operating expenses in Nebraska were given as $27,420,906.19, when they actually were $31,289,319.97, the difference being $3,868,413.68. That by reason of said error the net income in Nebraska for the year 1921 was greater than the actual net income by the last aforesaid amount. That proof of said error was made to the State Board of Equalization and Assessment, and in explanation thereof, which plaintiff now alleges to be the fact, upon March 15th, A. D. 1922, the principal office building of plaintiff in the City of Chicago, County of Cook, Illinois, was practically destroyed by fire, with a large part of the records, including part of those from which it was necessary to formulate and answer the questions included in the aforesaid forms "G" and "9"; that the data necessary for said information had to be reassembled from the different departments and when so reassembled it developed the error hereinbefore set forth; that said error was not disclosed by the re-assembling of said data until a short time previous to the date of the hearing before the said State Board upon the complaint of this plaintiff for equalization. That notwithstanding said palpable error and the proof thereof before the State Board, which was not controverted, the State Board refused to make any adjustment or equalization of plaintiff's valuation.

That the said several actions of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XVIII.

Plaintiff further alleges that it has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at one hundred per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers, of which notice must be given, which procedure is futile, and is not an adequate remedy at law.

XIX.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that behalf plaintiff alleges that it is willing and hereby offers to pay to the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against its property based upon a valuation not exceeding sixty-five per cent upon a valuation of plaintiff's property of $100,000,000, or 0.4745 per cent of the tax on the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization and Assessment for the year 1922, and plaintiff alleges that it will keep said offer
61 good and will pay said taxes when due upon said basis, and will pay all city and village taxes in full.

XX.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted enormous numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless each of them, their successors, agents, employes and all other persons acting by, through or under their authority or direction be restrained from so doing by order of this court.

Plaintiff further alleges and summarizes:

First. That the action of the State Board of Equalization and Assessment in fixing as the assessed value of the property of this
62 plaintiff the aforesaid sum of $137,589,782.00, or $48,081.42 per mile, is wholly void in that said action is contrary to and in violation of the provisions of Sections 1 and 4 of Article VIII of the Constitution of the State of Nebraska, as hereinbefore set forth, and that said action of said State Board is contrary to the express conditions contained in said provisions of said Constitution and the Laws of said State.

Second. That the said action of the State Board in so fixing the assessment of the property of this plaintiff at the sum of $137,589,782.00 while assessing all other property less than its actual value as hereinbefore alleged, denies to this plaintiff the equal protection of the laws and is, therefore, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States.

Third. That the action of the State Board while valuing plaintiff's property in considering credits, investments and securities,

which have no relation to the value of its property or the exercise of the rights of plaintiff in the State of Nebraska, is in violation of Sections 1 and 4 of Art. VIII of the Constitution of the State of Nebraska.

Third-B. The action of the State Board in so far as it assesses the real estate of plaintiff situate in the State of Nebraska at greater value than the real estate of citizens and residents of the State is in violation of the third paragraph of the fourth section of the Enabling Act to admit the State of Nebraska into the Union, in that the property of this plaintiff, a citizen of the United States residing without the State of Nebraska, is taxed higher than the property belonging to residents within the State of Nebraska.

Fourth. That by the action of the State Board of Equalization and Assessment in valuing and fixing the assessment of the property of this plaintiff at more than its actual value, as hereinbefore alleged, and all other property at less than its actual value, subjects this plaintiff to penalties and burdens different from and greater than the owners of other property in the State of Nebraska and compels plaintiff to bear an unequal and inequitable and illegal pro-
63 portion of the state, county, school, township and other subdivisions, excepting cities and villages in violation of the Fifth and Fourteenth Amendments to the Federal Constitution.

Fifth. That the actions of the State Board as hereinbefore alleged severally and collectively impose an unusual burden upon and an unwarranted interference with interstate commerce.

Wherefore, as plaintiff is without remedy at and by the rules of the common law, plaintiff prays:

1. That subpœna*ed* in equity forthwith issue for the defendants, and each of them, requiring them to answer to the petition of the plaintiff herein, but not under oath, said oath being hereby expressly waived.

2. Plaintiff further prays the Court to enter an order prescribing the percentage of actual value of plaintiff's property and of the tax levied, which plaintiff shall tender as its tentative tax to the several county treasurers, defendants herein, and for which they shall issue their several receipts excepting city and village tax to be paid in full for the year 1922, pending the final determination of this suit as soon as said taxes shall become due according to law, not exceeding sixty-five per cent of the actual value herein claimed for plaintiff's property.

3. That the Court issue a temporary restraining order enjoining and prohibiting the defendants severally from demanding,
64 collecting or attempting to collect from plaintiff any tax in excess of the portion thereon the Court may fix and determine shall now be paid, other than city and village taxes, and from issuing distress warrants, commencing suit to collect any such excess or the interest thereon or any penalties for the non-payment thereof until the hearing and final judgment of the Court as to the issuance of a temporary injunction herein.

4. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them upon due notice as required by law, restraining and enjoining the defendants, and each of them, their employes, agents, successors in office and all persons acting under their authority from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition. From issuing distress warrants, commencing suit, or imposing any penalty for any excess of the amount fixed by this court or interest or costs thereon.

5. Plaintiff further prays that upon final hearing the Court
65 will issue its order of injunction forever restraining and enjoining the defendants, and each of them, and their successors in office, and all persons acting for them, or any of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other tax payers as found and fixed by order of this court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by the said State Board of Equalization, and as now same appears upon the record of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in the premises as justice and equity may require. Chicago, Burlington & Quincy Railroad Co., by Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Its Attorneys.

66 STATE OF NEBRASKA,
County of Douglas, ss:

I, R. D. Pollard, being first duly sworn on oath, depose and say that I am the Tax Agent for the Chicago, Burlington & Quincy Railroad Company, a corporation, and have been such in the State of Nebraska for over 30 years that I have read the foregoing Petition in Equity and know the contents thereof, and that the statements and allegations therein contained are true, except as to those made on information and belief, and those I believe to be true. R. D. Pollard.

Subscribed and sworn to before me this 22nd day of November, 1922. H. A. Brown, Notary Public. (Seal.)

R. D. Pollard. This 2nd day of December A. D. 1922.

THE STATE OF NEBRASKA,
County of Lancaster, ss:

Subscribed in my presence and sworn to before me by R. D. Pollard this 2nd day of December, 1922. R. C. Hoyt, Clerk of the

District Court of the United States for the District of Nebraska, By J. H. McClay, Deputy.

Verified as amended this 18 day of Dec. 1922 on pages 26, 33 and 34. R. D. Pollard.

Subscribed and sworn to before me this 18 day of Dec. 1922. R. C. Hoyt, Clerk. (Seal.)

In United States District Court.

MOTION TO DISMISS.

[Filed Dec. 12, 1922.]

Motion of All Defendants Except R. E. Gallagher, County Attorney of Holt County, and J. P. Spearman, County Treasurer of Sarpy County, to Dismiss.

Come now all of the defendants except R. E. Gallagher, county treasurer of Holt County, and J. P. Spearman, county treasurer of Sarpy county, and move the court to dismiss the above entitled cause for the following reasons:

1. Plaintiff had a plain, adequate and complete remedy at law for its protection against all of the alleged acts charged in the petition by means of an error proceeding from the State Board of Equalization and Assessment to the supreme court of the state of Nebraska.

2. There is insufficiency of fact alleged to constitute a valid cause of action in equity against the defendants.

Clarence A. Davis, Attorney General of Nebraska, By Hugh Lamaster, Asst. Atty. Gen'l of Nebraska, Attorneys for Moving Defendants.

In United States District Court.

MOTION TO FILE SUPPLEMENTAL PETITION MAKING PARTIES DEFENDANT NEW COUNTY TREASURERS.

[Filed December 21, 1922.]

Plaintiff comes now and shows to the court that the terms of all of the defendants herein other than the defendant Osborne will expire on Thursday, the 4th day of January, 1923, on which day their successors in office, if qualified, will assume the duties of county treasurer in their respective counties; that part of the defendants county treasurers have been re-elected, and in some instances they will be succeeded by another official elected at the November, 1922, general election in their respective counties. That plaintiff therefore moves the court for permission to file a supplemental petition herein on the 5th day of January, 1923, making party defendants herein

successors in office of all of the county treasurers named as defendants who were not re-elected to said office at the general election in November, 1922, and that unless they voluntarily appear herein that subpœna issue against them to make them party defendants to this action. Chicago, Burlington & Quincy Railroad Company, by Bryon Clark, J. L. Root, J. W. Weingarten, C. W. Krohl, Its Attorneys.

69 In United States District Court.

ORDER FOR SUBSTITUTION.

[Filed December 21, 1922.]

The plaintiff having moved the court for permission to file a supplemental petition on the 5th day of January, 1923, adding as party defendants the successors in office of all those defendant county treasurers in this action who were not re-elected at the November, 1922, term, and the court being well advised in the premises doth sustain said motion.

It is therefore considered by the court that the plaintiff be and hereby is permitted to file a supplemental petition on the 5th day of January, 1923, naming as party defendants in substitution of those county treasurers defendant successors in office of all defendants herein who were not re-elected at the November, 1922, general election, the individuals who were elected, qualified as treasurers in their respective counties, and that if the said substituted defendants do not voluntarily appear to this action, that subpœna issue in conformity to law to advise the pendency of this action, and thereupon unless they show cause to the contrary they shall stand in the place and be subjected to all the burdens and acquire all rights of the party defendants in whose place they will be substituted. By the court: Thos. C. Munger, Judge.

70 SUPPLEMENTAL PETITION.

[Filed January 5, 1923.]

In the District Court of the United States for the District of Nebraska, Lincoln Division.

In Equity.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff,

vs.

W. H. OSBORNE, JR., as State Tax Commissioner of the State of Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County,

Nebraska; Gilbert E. Hasse, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska, E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens. H. Jensen, as County Treasurer, Kearney County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morril County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County,

Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; Naomi T. Wooton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County, Treasurer, Wheeler County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska, Defendants.

72 Comes now the plaintiff and by leave of court first had and obtained files this its Supplemental Petition, and alleges that since the filing of the original petition in this case a general election has been held in the State of Nebraska. That county treasurers have been elected in all and singular the counties named in the original petition. That in thirty-three of said counties the treasurers were re-elected, and in the remaining thirty-eight counties the treasurers named in the petition either were not candidates for re-election or were defeated for election and their successors in office have been elected. That all and singular the treasurers thus re-elected and elected to fill the positions occupied by defendant treasurers at the time the original petition was filed have qualified and are now the duly elected, acting and qualified treasurers of said counties. That the following named defendants on the 4th day of January, 1923, succeeded themselves as treasurers, to-wit:

Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska, Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Bar-
73 nard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska;

James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska.

That in the remaining counties described in plaintiff's original petition the following named defendants were elected as treasurers and on the 4th day of January, 1923, did qualify and are now occupying their respective offices, to-wit:

Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treaturer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte

County, Nebraska; Naomi T. Wooton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff, County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska.

That the said newly elected treasurers thus filling their first term of office are hereby made defendants in this action in accordance with permission granted by this Honorable Court on the 21st day of December, 1922.

The plaintiff for its cause of action against all and singular the defendants named herein by reference incorporates into this petition all and singular, except with reference to the amount of 1922 tax paid by plaintiff, the allegations contained in the original petition, but also alleges that since the filing of the original petition the county treasurers of Adams County, Box Butte County, Dawes County, Douglas County, Gage County, Harlan County, Pierce County, Blaine County, Sarpy County, Thomas County,
75 Thurston County have accepted without prejudice sixty-five per cent of the taxes levied against plaintiff in 1922 for state, county, school district, township and road district purposes in their respective counties, and have also accepted all terminal taxes levied against the plaintiff in 1922 in their respective counties for the benefit and use of cities and villages therein.

Plaintiff further alleges that it has paid and the county treasurers have accepted all terminal taxes levied against the plaintiff in 1922 for city and village purposes in the counties, to-wit:

Antelope,	Platte,	Red Willow,
Blaine,	Garfield,	Richardson,
Buffalo,	Gosper,	Saline,
Burt,	Holt,	Saunders,
Butler,	Hooker,	Scotts Bluff,
Cass,	Howard,	Seward,
Clay,	Kearney,	Thayer,
Colfax,	Lancaster,	Valley,
Dakota,	Merrick,	Webster,
Dawson,	Nemaha,	York,
Dundy,	Nuckolls,	Grant,
Fillmore,	Otoe,	Wheeler,
Frontier,	Pawnee,	Phelps,
Furnas,	Perkins,	Hitchcock,
Cedar,	Custer,	Jefferson,
Phelps,	Johnson,	Sherman.

Plaintiff further avers that there are no cities or villages situated on the plaintiff's lines of railway in Hayes or Sioux Counties.

Plaintiff further alleges that all of the defendants contend that all of the taxes levied against plaintiff for the year 1922 for every purpose are valid and legal and should be paid and that it is their duty as such county treasurers to collect the same.

That Section 5996, Compiled Statutes of Nebraska, 1922, provides amongst other things that:

"No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the treasurer's office and pay his taxes."

That by Section 6017 it is provided:

"When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of the company in the county where such tax is delinquent that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer, and if such agent or officer shall fail to pay over the money to the county treasurer, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars."

Plaintiff further alleges that taxes assessed against railroad companies become due on the first of November in the year in which they are levied, and delinquent on the first Monday in December of that year.

Plaintiff further alleges that Section 6020, Compiled Statutes of Nebraska, 1922, provides:

"No county or town board, city council or village trustees shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever."

That Section 4, Article VIII of the Constitution of the State of Nebraska provides:

"The Legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporations, nor shall commutation for such taxes be authorized in any form whatever."

That Section 6010, Compiled Statutes of Nebraska, 1922, makes it the duty of county treasurers on the first day of February next following the year in which personal taxes may have been levied and yet remain unpaid, to issue distress warrants for collection thereof, and the tax therein described is to be collected by levy and sale of the personal property of the taxpayer as upon execution.

Section 6087, Compiled Statutes of Nebraska, 1922, provides amongst other things that:

"Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, county or any subdivision thereof."

There is no statutory authority in the State of Nebraska for the payment under protest of less than 100 per cent of the tax levied against any taxpayer therein Inless some part of the tax shall
78 have been levied for an unlawful or illegal purpose, nor is there any statute authorizing plaintiff to pay any part of its taxes under protest so that it can recover the part paid under protest by legal proceedings or otherwise.

Plaintiff further alleges that some of the defendants would be willing to accept 65% of the taxes levied against plaintiff in their respective counties for state, county, school district, road district and township purposes and await the determination of this suit in this Court or in any court to which a judgment herein entered might be appealed to determine the legality of the remaining 35%, but they are coerced by the statute, by their bondsmen and the public officials so that unless restrained by the injunctional order of this Court they will before this suit will be finally determined either notify plaintiff's agent or agents in their respective counties of the amount of tax unpaid with demand that all moneys in agent's possession up to the amount of said unpaid tax, whether legal or illegal, be delivered into the treasurer's possession, and plaintiff's agents under fear of fine and prosecution will probably comply with such orders and if the money be thus paid it will be placed in the funds in the hands of the county treasurers and will be paid out in satisfaction of warrants drawn upon the respective funds, and in the event plaintiff shall finally prevail in this action it will have no remedy whereby it can recover back any part of the 35% taxes alleged by plaintiff to be unjust and illegal.

79 Plaintiff has offered to pay to all of the defendant treasurers sixty-five per cent of the taxes levied in those counties against plaintiff for state, county, school district, township, road district and other like purposes, and has sent its checks to said treasurers for that amount of said tax with interest from the first of November up to the time the checks were thus delivered, and that it at all times has stood ready and now stands ready to make such payments good. This plaintiff at all times has been able, ready and willing to pay more than sixty-five per cent of the taxes thus levied against it for state, county, school district, township and road district purposes if in the judgment of the court any greater

amount is lawfully due or should be paid. That it will stand ready at all times to abide the final order of the court with respect thereto or to any interlocutory order this Court may make as a condition precedent to the issuance of an order of injunction from this Court as prayed for in the original petition.

Plaintiff alleges that it is without adequate remedy at law and has no remedy at law whatever except in a court of equity.

Wherefore, as plaintiff is without remedy at and by the rules of the common law, it prays:

1. That subpœnaes in equity forthwith issue for the defendants, to-wit:

80 Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska.

and each of them, requiring them to answer to the original and supplemental petition herein, but not under oath, said oath being hereby expressly waived.

81 2. Plaintiff further prays the Court to enter an order fixing the percentage of the tax levied against plaintiff for all purposes, other than city and village purposes, which it shall tender in all and singular the counties herein described to the several county treasurers, defendants herein, for which they shall issue their several receipts excepting city and village tax which plaintiff shall pay in full for the year 1922. That the percentage of such tax so to be paid pending the final determination of this suit should not exceed 65% of the actual value herein as determined by the State Board of Equalization and Assessment for plaintiff's property.

3. That the Court issue a temporary restraining order enjoining and prohibiting the defendants severally from demanding, collecting or attempting to collect from plaintiff any tax in excess of the portion thereof the Court may fix and determine shall now be paid, other than city and village taxes, and from issuing distress warrants, commencing suit to collect any such excess or the interest thereon or any penalties for the non-payment thereof until the hearing and final judgment of the Court as to the issuance of a temporary injunction herein.

4. Plaintiff further prays the Court to issue its order of temporary injunction against the defendants, and each of them, upon notice as required by law, restraining and enjoining the defendants,

82 and each of them, their employees, agents, successors in office and all persons acting under their authority, from carrying out their said purpose to impose upon the plaintiff said unlawful and discriminatory valuations of its property for taxing purposes, and to restrain and enjoin the defendants, and each of them, from collecting any taxes against the plaintiff upon a valuation greater than that to be fixed by the Court, in accordance with the prayer of this petition. From issuing distress warrants, commencing suit or imposing any penalty for any excess of the amount fixed by this Court or interest or costs thereon.

5. Plaintiff further prays that upon final hearing the Court will issue its order of injunction forever restraining and enjoining the defendants, and each of them, and their successors in office, and all persons acting for them, or any of them, from collecting from the plaintiff or against its property taxes in excess of the just and fair valuation of plaintiff's property and in proportion to the valuation of the property of other tax payers, as found and fixed by order of this Court, and plaintiff further prays the Court for a decree declaring null and void the valuation of plaintiff's property as fixed by the said State Board of Equalization, and as now same appears upon the record of the defendants herein, and discharging plaintiff's property from the pretended lien of said unlawful valuation; and plaintiff prays for such other and further relief in

83 the premises as justice and equity may require. Chicago, Burlington & Quincy Railroad Co., By Byron Clark, J. L. Root, J. W. Weingarten, and C. W. Krohl, Its Attorneys.

ATE OF NEBRASKA,
County of Douglas, ss:

I, R. D. Pollard, being first duly sworn on oath, depose and
y that I am the Tax Agent for the Chicago, Burlington & Quincy
ilroad Company, a corporation, and have occupied that position
the State of Nebraska for over thirty years; that I have read
e foregoing Supplemental Petition in Equity and know the con-
nts thereof, and that the statements and allegations therein con-
ined are true, except as to those made on information and belief,
d those I believe to be true. R. D. Pollard.

Subscribed and sworn to before me this 4th day of January,
23. H. A. Brown, Notary Public. (Seal.) (Seal states "Com-
ssion expires July 3, 1926.")

STATE OF NEBRASKA,
County of Douglas, ss:

In United States District Court.

AFFIDAVIT OF KATHLEEN EGAN.

[Filed January 5, 1923.]

Kathleen Egan, being first duly sworn deposes and says that she
clerk in the Legal Department of the Chicago, Burlington &
incy Railroad Company's general offices in Omaha, Nebraska, and
t in that capacity on the 29th day of December, 1922, she mailed
each of the defendants named in the notice hereto attached and
rked Exhibit "A" copy of said notice, which was enclosed and
led in an envelope which was addressed one to each of the de-
dants and mailed to them at their usual postoffice address, and
t upon each envelope there was affixed a four cent United States
stage stamp, and each one of the envelopes was placed in the
ited States mail. Kathleen Egan.

Subscribed and sworn to in my presence and before me this 3d
y of January, 1923. H. A. Brown, Notary Public. (Seal.)

EXHIBIT "A" TO AFFIDAVIT.

In United States District Court.

(Title of Case.)

You and each of you as defendants in the above entitled cause are hereby notified that the Chicago, Burlington & Quincy Railroad Company on the fifth day of January, 1923, will file its Supplemental Petition in the United States District Court for District of Nebraska, Lincoln Division, against you and each of , the object and purpose of said petition is to have declared in-

valid the 1922 assessment by the State Board of Equalization and Assessment in the State of Nebraska of the property of the Chicago, Burlington & Quincy Railroad Company, and to have adjudged that all of said tax in excess of 65% thereof is null and void and that you and each of you be temporarily enjoined during the pendency of this action from collecting any part of the 35% of the tax thus alleged to be illegal, excessive and unjust until the further order of this Court.

You are further notified that on the 10th day of January, 1923, at the hour of nine o'clock, or so soon thereafter as plaintiff can be heard, should the Court refuse to issue said temporary injunction, it will ask that a temporary injunction be issued against you and each of you restraining you from collecting any part of said 35% of said taxes during an appeal which plaintiff will prosecute to the proper appellate court from any adverse ruling made by the special court of three judges who heard the evidence adduced during the hearing heretofore had for a temporary injunction, pending the litigation in the United States District Court for the District of Nebraska, Lincoln Division.

That plaintiff will submit in support of its application the petitions in this case duly verified and evidence by way of affidavit in
86 possession of the official reporter in this case, all of which will be open to your inspection.

You will take due notice and govern yourselves accordingly. Chicago, Burlington & Quincy Railroad Co., By Byron Clark, J. L. Root, J. W. Weingarten, and C. W. Krohl, Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

In United States District Court.

AFFIDAVIT OF RUTH DETRING.

[Filed January 5, 1923.]

Ruth Detring being first duly sworn deposes and says that she is a clerk in the office of the Legal Department in the Headquarters of the Chicago, Burlington & Quincy Railroad Company in Omaha, Nebraska; that on the 29th day of December, 1922, she sent a printed notice, copy of which is hereto attached and marked Exhibit "A," to the Governor of the State of Nebraska, to Honorable Clarence A. Davis, as Attorney General of the State of Nebraska, and to Honorable Hugh Lamaster, Assistant Attorney General; that these notices were severally sealed in envelopes addressed to the Governor, the Attorney General, and the Assistant Attorney General at Lincoln, Nebraska, and four cents in United States postage was affixed
87 to each envelope, and the same were placed in the United States mails on said day. Ruth Detring.

Subscribed in my presence and sworn to before me this 3d day of January, 1923. H. A. Brown. (Seal.)

(Exhibit "A" attached to this affidavit of Ruth Detring is in words and figures identical with Exhibit "A" attached to and part of the affidavit of Kathleen Egan above set forth, and same is therefore omitted.)

88 That thereafter, on the fifth day of January, 1923, Chancery Subpœna was issued for all of the defendants substituted by said Supplemental Petition, and was thereafter duly served upon each of said defendants, and return thereof showing such service made by the Marshal.

89 In United States District Court.

ORDER DENYING TEMPORARY INJUNCTION.

[Filed January 10, 1923.]

Now on this 10th day of January, A. D., 1923, this cause having heretofore been taken under advisement by the Court on plaintiff's application for a temporary injunction the Court being well advised in the premises, doth find;

That plaintiff for the redress of the wrongs recited in its petition had an adequate remedy at law under the statutes of the state of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska, and for that reason there is no equity in the application for a temporary injunction.

It is therefore considered by the Court that plaintiff's application for temporary injunction be and hereby is denied.

To all and singular the findings and judgment of the Court plaintiff excepts and its exceptions are hereby allowed. By the Court: Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. Joseph W. Woodrough, District Judge.

In United States District Court.

PLAINTIFF'S MOTION FOR REHEARING.

[Filed January 10, 1923.]

Comes now the plaintiff in the above entitled cause and most respectfully moves the Court, composed of Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas C. Munger, District Judge, and Honorable Joseph W. Woodrough, District Judge, to set aside its order of January 10th, 1923, refusing to grant plaintiff a temporary injunction, and to grant plaintiff a re-hearing upon its application for a temporary injunction, and to consider the opinion of the Supreme Court of the United States in the case of Sioux City Bridge Company vs. Dakota County, Nebraska, No. 105, October Term, 1922, January 2, 1923, subsequently to the submission of said application.

Plaintiff shows that the Supreme Court of the United States say in said opinion, that the statutes of the State of Nebraska, considered in the light of the rule of the law declared by the Supreme Court of the State of Nebraska, in the said Sioux City Bridge Company case, and in Lincoln Telephone & Telegraph Company vs. Johnson County, 102 Neb. 254, in all those cases where a complaining taxpayer's property has been assessed at one-hundred per cent of its value while other property in the taxing district in the same year is intentionally and systematically assessed at a much lower percentage, "deny the injured taxpayer any remedy at all, because
91 it is utterly impossible for him by any judicial proceedings to secure an increase in the assessment of the great mass of over-assessed property in the taxing district * * *. In substance and effect the decision of the Nebraska Supreme Court in this case upholds the violation of the Fourteenth Amendment, to the injury of the Bridge Company."

Plaintiff most respectfully submits that the decision of the Supreme Court of the United States in the said Sioux City Bridge Company case should induce this Honorable Court to vacate its former order and to grant a re-hearing herein, and to hold that plaintiff was without an adequate remedy at law and to issue a temporary injunction, as prayed in plaintiff's bill. Chicago, Burlington & Quincy Railroad Company, By Byron Clark, Jesse L. Root, Solicitors.

92 In United States District Court.

ORDER OVERRULING APPLICATION TO VACATE ORDER REFUSING TEMPORARY INJUNCTION.

[Filed January 18, 1923.]

This cause coming on to be heard upon the plaintiff's application to vacate the order of this Court entered January 10, 1923, refusing to grant plaintiff a temporary injunction, and the Court being well advised in the premises,

It is ordered that said application be and the same is overruled and denied.

Dated this 11th day of January, A. D. 1923. Robt. E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Thos. C. Munger, District Judge.

93 In United States District Court.

APPEARANCE OF COUNSEL FOR ALL OF THE DEFENDANTS.

[Filed January 18, 1923.]

Comes now O. S. Spillman, Attorney General of the State of Nebraska, and Hugh Lamaster, Assistant Attorney General for the State of Nebraska, and enter their appearance herein, for all and singular of the defendants.

Dated this 16 day of January, 1923. O. S. Spillman, Attorney General for the State of Nebraska. Hugh Lamaster, Assistant Attorney General for the State of Nebraska.

In United States District Court.

PLAINTIFF'S APPLICATION FOR INJUNCTION PENDING APPEAL.

[Filed January 18, 1923.]

To Honorable Robert E. Lewis, Circuit Judge; Hon. T. C. Munger, District Judge, and J. W. Woodrough, District Judge, presiding:

The plaintiff comes now on this tenth day of January 1923, subsequently to the entering of the Court's order denying plaintiff's prayer for an interlocutory injunction against the defendants pending the trial of this case on its merits and shows to the Court that plaintiff will immediately appeal to the Supreme Court of the United States from this Court's order denying plaintiff's prayer for an interlocutory injunction.

Plaintiff further shows to the Court that thirty-five per cent of the taxes levied against plaintiff's property and the plaintiff upon the valuation made by the State Board of Equalization and Assessment and withheld by plaintiff from payment pending the hearing on plaintiff's prayer for temporary injunction is the sum of $633,-78.38. That plaintiff has always desired and offered to pay such part of its taxes as might be justly and legally due defendants, and plaintiff alleges that under the evidence adduced before this Honorable Court upon the hearing of application for temporary injunction plaintiff does not owe defendants taxes in excess of 55% of the total tax levied upon its property in 1922 but plaintiff says that in its desire to do equity in the premises it offered to pay 65% of those taxes and in some instances defendants have accepted 65% of those taxes pending the outcome of the hearing upon the prayer for the temporary injunction.

Plaintiff further alleges that it is still willing to pay 65% of those taxes pending the outcome of its appeal to the Supreme Court of the United — or whatsoever other sum this Court is of the opinion it should pay pending that appeal.

Plaintiff further shows the Court that notwithstanding an order has been entered denying relief to the plaintiff upon its application for temporary injunction on the ground that plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of Nebraska which deprived the Court of jurisdiction to grant plaintiff any relief in the premises, plaintiff most respectfully represents to the Court that said decision was erroneous and plaintiff should have the privilege of testing its validity by appeal to the Supreme Court of the United States and in the meantime be protected against payment to the defendants of that part of its taxes which plaintiff claims, and which proof shows, defendants are not lawfully entitled to collect; and plaintiff further alleges that justice and equity will

be promoted if this Honorable Court will make and enter an order enjoining defendants, pending the appeal, from collecting from plaintiff a greater amount than 65% of those taxes. If the court shall refuse to grant such an order pending appeal, plaintiff
96 will be compelled by distress warrants and other drastic proceedings to pay the whole amount of said taxes to defendants who will disburse the money thus paid and plaintiff will be without any remedy at law or any equity, and furthermore plaintiff's appeal will become moot in the Supreme Court of the United States and plaintiff will be without any remedy whatever for the protection of its rights in the premises.

Plaintiff further alleges that it is solvent and is able, ready and willing to execute a bond in good and sufficient surety in such sum as the Court may direct, fully protecting defendants and the public, so that in the event the Supreme Court of the United States shall hold that the order of this Court denying plaintiff's prayer for an interlocutory injunction was properly entered, the full amount of those taxes may be secured to the defendants and to the public together with interest thereon and the cost of the appeal.

Plaintiff further alleges that the percentage of taxes to be paid to the defendants pending the appeal are believed by plaintiff under the proof not to exceed 55% of the total levy, yet plaintiff desiring to do full equity should the Court be of the opinion that a different percentage of taxes should be paid as a condition precedent to the issuance of an injunction against the collection of the remainder of the taxes pending the appeal plaintiff is willing that the Court
97 shall fix the percentage of taxes which shall be paid as a condition precedent to an injunctional order against the defendants restraining them from collecting the balance of said taxes pending appeal.

Wherefore plaintiff prays that the court will enter an order prescribing and fixing the percentage of taxes above mentioned which shall be forthwith paid to the defendants, if not already paid, as a condition of an injunction against the defendants restraining them from collecting the balance of said taxes pending appeal of the plaintiff to the Supreme Court of the United States.

Plaintiff further prays the Court to enter its order restraining and enjoining the defendants, their officers, agents, employees, successors in office from collecting or attempting to collect from the plaintiff the balance of said taxes other than the percentage *the percentage* the Court shall fix to be paid pending the plaintiff's appeal to the Supreme Court of the United States.

Plaintiff further prays the Court to fix and prescribe the amount of bond which plaintiff shall give as a supersedeas bond to protect the defendants and the public against loss on account of the plaintiff being permitted to withhold such portion of said taxes as the Court shall prescribe until the determination of plaintiff's appeal by the Supreme Court of the United States and for such other relief as justice and equity require in the premises. Byron Clark, J. L.
98 Root, J. W. Weingarten, and C. W. Krohl, Attorneys for Plaintiff.

STATE OF NEBRASKA,
County of Douglas, ss:

J. L. Root, being first duly sworn deposes and says that he is one of the solicitors for the plaintiff in the above entitled cause; that he personally presented the petition and the proof upon the application for a temporary injunction pending trial of the case on its merits in the District Court and is familiar with the pleadings and the evidence in this case; that he has read the foregoing application which was prepared by him personally; that he believes said application to be true and that justice and equity will be promoted by the Court granting the order of injunction and the other things in said application prayed for; that the appeal in this case is taken in good faith and not for the purpose of delay and will be prosecuted speedily and the cause brought to a final determination with all reasonable dispatch. Jesse L. Root.

Subscribed and sworn to before me this 10" day of January, 1923. H. A. Brown, Notary Public. (Seal.)

In United States District Court.

PLAINTIFF'S PETITION FOR APPEAL AND ORDER ALLOWING SAME.

[Filed January 18, 1923.]

The above named complainant, Chicago, Burlington & Quincy Railroad Company, conceiving itself aggrieved by the order entered on the 10th day of January, 1923, in the above entitled proceeding, overruling complainant's application for a preliminary injunction pending the trial of this case on its merits, doth hereby appeal from said order to the Supreme Court of the United States, and prays that this, its appeal, may be allowed; and that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States. Byron Clark, Jesse L. Root, J. W. Weingarten, and C. W. Krohl, Attorneys for Plaintiff and Appellant, 1004 Farnam Street, Omaha, Nebraska.

Lincoln, Nebraska, January 16th, 1923.

And now, on this day, it was ordered that the appeal be allowed as prayed for provided complainant shall give a bond to the State of Nebraska for the use of the defendants all and singular, and their successors in office, in the penal sum of Four Hundred Fifty Thousand Dollars ($450,000.00), conditioned that complainant shall prosecute its appeal to effect without unnecessary delay, and if defeated on its appeal, will pay to the defendant county treasurers, or their successors in office, the taxes levied against complainant in Nebraska, for 1922, as this court shall finally adjudicate to be due, together with penalties, interest, damages, and costs, as ascertained by this court, and shall pay all damages to any person who shall suffer by this appeal. Bond may be approved by District

Judge Munger. Robt. E. Lewis, Circuit Judge. Thos. C. Munger, District Judge. J. W. Woodrough, District Judge.

101 In United States District Court.

PLAINTIFF'S ASSIGNMENT OF ERRORS.

[Filed January 18, 1923.]

Assignment of Errors.

Now comes the plaintiff in the above entitled cause, by its solicitors, and in connection with its petition for appeal to the United States Supreme Court from the Order of said District Court, entered January 10, 1923, denying plaintiff's application for an interlocutory injunction in the above entitled cause, files the following assignment of errors upon which plaintiff will rely on said appeal:

The District Court erred:

1. In holding and adjudging that the plaintiff had an adequate remedy at law in the premises under the statutes and laws of the State of Nebraska.

2. In holding and adjudging that said Court was without jurisdiction in the premises by reason of supposed adequate remedy at law under the laws and statutes of the State of Nebraska, because the remedy at law which would defeat the jurisdiction of the Court in the premises must be a plain, adequate and complete remedy at law in the Federal Court, and no such remedy exists.

3. In denying the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from imposing upon the plaintiff excessive, unequal, unlawful and discriminatory valuation of its property for taxation purposes, as set forth in plaintiff's petition.

102 4. In not granting the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from imposing upon the plaintiff excessive, unequal, unlawful and discriminatory valuation of its property for taxation purposes, as set forth in plaintiff's petition.

5. In denying the application of the above named plaintiff for an interlocutory injunction restraining the defendant tax officials of the State of Nebraska from collecting any taxes against the plaintiff upon a valuation of plaintiff's property greater than that to be fixed by the Court, in accordance with the prayer of the petition.

6. In finding that for the redress of the wrongs recited in its petition, plaintiff had an adequate remedy at law under the statutes of the State of Nebraska in prosecuting error proceedings to the Supreme Court of the State of Nebraska.

7. In finding that plaintiff had an adequate remedy at law under the statutes of the State of Nebraska and for that reason there was no equity in plaintiff's application for an interlocutory injunction.

8. In finding that plaintiff had an adequate remedy under the statutes of the State of Nebraska to correct the unconstitutional dis-

crimination against the plaintiff effected by the intentional and systematic inequality of assessment, whereby plaintiff's property was assessed at more than 100% of its actual value and other property assessed at not to exceed 65% of its actual value.

9. In holding that the uncertain, doubtful and obscure provisions of the laws of Nebraska with reference to error proceedings, afforded plaintiff a plain, adequate and complete remedy for the correction of said unlawful and unconstitutional inequality of assessment.

10. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting from plaintiff taxes based upon an intentional and systematic inequality of assessment, whereby plaintiff's property was assessed in excess of its actual value and other property was systematically and intentionally assessed at less than its actual value, in violation of the plaintiff's right to equal protection of the laws under the Constitution and laws of the State of Nebraska and the Fourteenth Amendment to the Constitution of the United States and the provisions of the Enabling Act of the Congress of the United States under which the State of Nebraska was admitted into the Union.

11. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting taxes from plaintiff based upon a greater percentage of the actual value of plaintiff's property than the percentage of actual value at which all other property was intentionally and systematically underassessed.

12. In refusing to enjoin the defendant tax officials of the State of Nebraska from levying and collecting taxes based on an assessment of plaintiff's property at more than its actual value when all other property in the State of Nebraska, except railroads, was intentionally and systematically assessed at less than its actual value, because said unequal and discriminatory method of assessment deprives plaintiff of its property for public use without just compensation, and without due process of law, and denies to plaintiff the equal protection of the laws, guaranteed by the Constitution of the State of Nebraska, and the Fourteenth Amendment to the Constitution of the United States, and imposes unlawful burdens upon interstate commerce in violation of Par. 3, Sec. 8, of Art. I, the commerce clause, of the Constitution of the United States.

13. In not holding and adjudging that the valuation of plaintiff's property for taxation purposes at more than 100% of its actual value, and the intentional and systematic under-valuation of all other property in the State of Nebraska at not to exceed 65% of its value, and the unlawful assessment and levy of taxes upon plaintiff's property upon said discriminatory valuation was a denial to the plaintiff of the equal protection of the laws guaranteed by the Constitution of the State of Nebraska and the Fourteenth Amendment to the Constitution of the United States.

14. In denying the application of the plaintiff for an interlocutory injunction herein, because the plaintiff is wholly without remedy in the premises, except through the injunction and decree of said Court.

105 Wherefore, the plaintiff prays that the said Order or Decree of said District Court, entered January 10, 1923, denying the application of the plaintiff for an interlocutory injunction, be reversed, annulled and set aside, with directions that the application be granted, and for such other and further Order as may be appropriate. Byron Clark, Jesse L. Root, J. W. Weingarten, Solicitors for Plaintiff.

106 In United States District Court.

ORDER ALLOWING INTERLOCUTORY INJUNCTION PENDING APPEAL.

[Filed January 18, 1923.]

Now on this 10th day of January, 1923, the court of three judges, to-wit: Honorable Robert E. Lewis, Circuit Judge, Honorable Thomas C. Munger, District Judge, and Honorable J. W. Woodrough, District Judge, having heretofore entered its order denying plaintiff's application for an interlocutory injunction in this cause pending a trial on its merits in the district court, on the ground that plaintiff had an adequate remedy at law by way of error proceedings to the Supreme Court of the state of Nebraska, and plaintiff having given notice of its intention to appeal to the Supreme Court of the United States from said order, and having presented its application for an order fixing the percentage of taxes it should pay to the defendants as their interests may appear pending plaintiff's appeal to the Supreme Court of the United States, and prescribing the amount of bond plaintiff shall give as a condition for the court granting an order of injunction restraining and enjoining the defendants from collecting the balance of said taxes pending the determination of said appeal, and the Court being well advised in the premises finds that should the plaintiff perfect its appeal without an order restraining the defendant treasurers from collecting all of the taxes in contention, the defendants could avail themselves of the statutory proceedings of the state of Nebraska and compel plaintiff to pay
107 all those taxes, whereby its contentions on appeal might become moot and the money disbursed making it doubtful whether any part of such taxes could be recovered, and the Court being of the opinion that defendants cannot be harmed and the rights of the plaintiff would be promoted by having an opportunity to present its appeal to the Supreme Court of the United States, and that it would be just and equitable to issue said order,

It is by the court therefore ordered and decreed That plaintiff shall pay, or offer to pay, at the time payment of taxes is required to be made, to the defendant county treasurers, or their successors in office, as their respective interests may appear, 75 per cent of the total tax levied in their respective counties against plaintiff for state, county, school district, township, road district, and other like purposes, and that pending the determination of plaintiff's appeal by the Supreme Court of the United States, and until the further order of this court the defendants, their officers, agents and successors in office, be and

they hereby are restrained and enjoined from collecting or attempting to collect from plaintiff any part of the taxes so as aforesaid levied for 1922 in excess of 75 per cent of the total levy, in all those counties where the total amount of tax levied against plaintiff in 1922 is over Three Thousand Dollars, exclusive of interest.

108 It is further ordered That plaintiff shall execute a bond in favor of the state of Nebraska for the use of the defendants, and each of them, and their successors in office, and each of them, in the penal sum of $450,000.00 Dollars according to this order, which bond may be approved by the Honorable Thomas C. Munger, District Judge. Robt. E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Thos. C. Munger, District Judge.

109 In United States District Court.

BOND TO SECURE PRELIMINARY INJUNCTION.

[Filed January 18, 1923.]

Know all men by these presents that we, Chicago, Burlington & Quincy Railroad Company, as principal, and United States Fidelity & Guaranty Company, as surety, are hereby held and firmly bound unto the State of Nebraska for the use of the defendants, all and singular and their successors in office all and singular, in the penal sum of four hundred fifty thousand dollars ($450,000.00) for the payment of which, well and truly to be made, we hereby bind ourselves jointly and severally, firmly by these presents, subject to the following conditions:

Whereas, in this action on the 10th day of January, 1923, after the court refused to issue a preliminary injunction restraining the defendants, and their successors in office, and those acting by or through them, from collecting to exceed sixty-five (65%) per cent of the taxes assessed against complainant's property in the state of Nebraska for all purposes other than city and village purposes, the court upon complainant's application entered an order restraining the defendants, all and singular, their successors in office, all and singular, and all persons acting by or through the defendants, all and singular, from collecting or attempting to collect from said complainant any portion of the taxes, other than for city and village purposes assessed against it and its property in 1922 in excess of seventy-five per cent of that tax in all those counties where

110 the total amount of tax levied against complainant in 1922 was over Three Thousand Dollars exclusive of interest, but conditioned that complainant should execute a bond in favor of the state of Nebraska for the use of the defendants, and each of them, and their successors in office, and each of them, in the penal sum of Four Hundred Fifty Thousand Dollars, conditioned that complainant shall pay or tender to the several county treasurers, defendants herein, or their successors in office, seventy-five per cent of its taxes in Nebraska with legal interest thereon, other than the taxes for city

and village purposes, and, if the defendants, or any of them, should prevail upon the appeal to the Supreme Court of the United States, complainant should pay with lawful interest all that part of its taxes found by the court in this action to be just and legal over and above seventy-five per cent to be paid at the present time.

Now, therefore, the condition of this obligation is such that, if complainant shall prosecute its appeal to effect and without unnecessary delay and if, upon the final determination of said appeal it shall be found that said preliminary injunction was wrongfully or improperly issued, the said Chicago, Burlington & Quincy Railroad Company shall pay all costs taxed against it and all damages that may have been suffered by any person on account of the issuance of this order, and shall pay to the several defendant county
111 treasurers or their successors in office the amounts of the taxes levied in Nebraska for the year 1922 as the court shall finally adjudicate to be due, together with legal interest and penalties thereon as provided by law, all such taxes, interest, penalties, damages and costs to be ascertained by this court in this action, then this obligation to be null and void, otherwise to be and remain in full force and effect.

Dated this 16th day of January, 1923. Chicago, Burlington & Quincy Railroad Company, Principal, By Jesse L. Root, Its Attorney. United States Fidelity & Guaranty Company, Surety, By R. K. Barton, Its Attorney in Fact. (Seal.)

The above bond has been approved as to form and surety and filed this 16th day of Jany., 1923. Thos. C. Munger, District Judge.

112 In United States District Court.

PRÆCIPE FOR TRANSCRIPT AND STIPULATION.

[Filed February 7, 1923.]

The Clerk of said District Court is here requested to prepare a transcript of the record in the above entitled cause and file the same in the office of the Clerk of the Supreme Court of the United States, at the City of Washington, District of Columbia, as required by the rules of this Court, and the said Court of Appeals, and include in said transcript, pleadings, proceedings, and papers on file and of record in his office appertaining to said cause, enumerated as follows, to-wit:

1. Petition in Equity.
2. Motion of all defendants except R. E. Gallagher, County Attorney of Holt County, and J. P. Spearman, County Treasurer of Sarpy County, to dismiss.
3. Motion to file Supplemental Petition making parties defendant new County Treasurers.
4. Order filed December 21, 1922.

5. Supplemental Petition.
6. Affidavit of Kathleen Egan.
7. Affidavit of Ruth Detring.
8. Memo of Chancery Subpœna issued, service and return.
9. Order denying temporary injunction.
10. Plaintiff's motion for rehearing on application for preliminary injunction pending trial.
11. Order overruling application to vacate order refusing temporary injunction.
12. Appearance of counsel for all defendants.
13. Plaintiff's application for injunction pending appeal.
113 14. Plaintiff's Petition for Appeal with Order thereon.
15. Plaintiff's assignment of errors.
16. Order of court allowing interlocutory injunction pending appeal.
17. Bond to secure preliminary injunction.
18. Original citation and acceptance of service.
19. Præcipe for Transcript and stipulation in regard thereto.
20. Condensed statement of the evidence allowed and settled by the court and filed on the 7 day of February, 1923.
21. Stipulation as to printing the record.
22. Clerk's certificate.

Said transcript to be prepared as required by the rules of the Supreme Court of the United States, and file the same with the Clerk of said Court at Washington, District of Columbia, on or before the 15th day of February, 1923. Byron Clark, Jesse L. Root, J. W. Weingarten, Attorneys for Appellant.

Receipt of a copy of the foregoing præcipe for transcript of the record is here acknowledged.

Dated February 1st, 1923. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. Attorney General, Attorneys for Appellees.

114 STIPULATION.

[Filed February 7, 1923.]

It is here stipulated and agreed by and between parties hereto that the foregoing præcipe for a Transcript of the Record on Appeal to the Supreme Court of the United States, enumerates all of the record and proceedings had in said cause necessary to be included in said transcript. Byron Clark, Jesse L. Root, J. W. Weingarten, Attorneys for Appellant. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. — General of Nebraska, Attorneys for Appellees.

115 In United States District Court.

STIPULATION AS TO PRINTING THE RECORD.

[Filed February 7, 1923.]

It is here stipulated and agreed by and between parties hereto, that printing of the record as provided by an Act of Congress entitled "An Act to diminish the expense of proceedings on appeal and writ of error or certiorari," approved February 13, 1911, is here waived and election made to take and file a transcript of the record in the Supreme Court of the United States, there to be printed under the supervision of the Clerk in accordance with the rules and practice of said Supreme Court.

Dated this 1st day of February, 1923. Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Attorneys for Appellant. O. S. Spillman, Attorney General of Nebraska; Hugh Lamaster, Asst. Attorney General, Attorneys for Appellees.

116 [File endorsement omitted.]

CITATION & SERVICE.

[Filed Jan. 18, 1923.]

Dist. Court U. S. for Dist. of Neb., Lincoln Div.

In Equity No. 181.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Plaintiff and Appellant,

vs.

W. H. OSBORNE, as Tax Commissioner of Nebraska, et al., Defendants and Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To W. H. Osborne, as Tax Commissioner of the State of Nebraska, and Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County Nebraska; Joseph Roberts, as County Treasurer, Dodge

County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County, Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; Davis Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County,

Nebraska; William L. Boettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Wootton, as County Treasurer, Red Willow County, Nebraska; Fred Brecht, as County Treasurer, Richardson County, Nebraska; Vance Jelinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Marcy, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska,
117 Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be holden at Washington on the 15th day of February, 1923, pursuant to an appeal filed in the Clerk's office of the district Court of the United States for the District of Nebraska, Lincoln Division, wherein Chicago, Burlington & Quincy Railroad Company is appellant and W. H. Osborne, Jr., as State Tax Commissioner of the State of Nebraska; Gilbert E. Haase, as County Treasurer, Buffalo County, Nebraska; Fred E. Ericson, as County Treasurer, Burt County, Nebraska; Mrs. Anna B. Grant, as County Treasurer, Chase County, Nebraska; Harry J. Platz, as County Treasurer, Clay County, Nebraska; Joseph Sedlacek, as County Treasurer, Colfax County, Nebraska; Walter E. Miller, as County Treasurer, Dakota County, Nebraska; Irene Lamma, as County Treasurer, Dawson County, Nebraska; Omar E. Butler, as County Treasurer, Dixon County, Nebraska; Joseph Roberts, as County Treasurer, Dodge County, Nebraska; Freeman K. Fisk, as County Treasurer, Dundy County, Nebraska; Geo. W. Wagner, as County Treasurer, Frontier County, Nebraska; James H. Scott, as County Treasurer, Furnas County, Nebraska; Julian A. Barnard, as County Treasurer, Gage County, Nebraska; Frank M. Smith, as County Treasurer, Garfield County, Nebraska; James L. Fitzpatrick, as County Treasurer, Greeley County, Nebraska; Harry E. Toof, as County Treasurer, Hamilton County, Nebraska; Robert R. Knowles, as County Treasurer, Hitchcock County, Nebraska; John A. Frandsen, as County Treasurer, Howard County, Nebraska; E. L. Jenkins, as County Treasurer, Jefferson County, Nebraska; James A. Lawrence, as County Treasurer, Johnson County, Nebraska; Jens H. Jensen, as County Treasurer, Kearney County, Nebraska; Sam Souder, as County Treasurer, Lincoln County, Nebraska; Emil Hansen, as County Treasurer, Merrick County; Nebraska; Belle Galley, as County Treasurer, Nuckolls County, Nebraska; Mark Flanagin, as County Treasurer, Pawnee County, Nebraska; Mary J. Ford, as County Treasurer, Perkins County, Nebraska; Carl Peterson, as County Treasurer, Phelps County, Nebraska; John W. Fillman, as County Treasurer, Polk County, Nebraska; George F. Bartek, as

County Treasurer, Saunders County, Nebraska; Agnes J. Pence, as County Treasurer, Seward County, Nebraska; Frank A. Grow, as County Treasurer, Sherman County, Nebraska; Lafe Paist, as County Treasurer, Valley County, Nebraska; Frank L. Propst, as County Treasurer, York County, Nebraska; Pearl Woodworth, as County Treasurer, Adams County, Nebraska; David Fletcher, as County Treasurer, Antelope County, Nebraska; Elmer N. Demaray, as County Treasurer, Blaine County, Nebraska; Cora M. Lewis, as County Treasurer, Box Butte County, Nebraska; William D. Miller, as County Treasurer, Butler County, Nebraska; Mia Gering, as County Treasurer, Cass County, Nebraska; Martin Nelson, as County Treasurer, Cedar County, Nebraska; James M. Nelson, as County Treasurer, Cheyenne County, Nebraska; Edward L. Cleveland, as County Treasurer, Custer County, Nebraska; Belle Quinn, as County Treasurer, Dawes County, Nebraska; Otto J. Bauman, as County Treasurer, Douglas County, Nebraska; Clay Thomas, as County Treasurer, Fillmore County, Nebraska; George A. Carter, as County Treasurer, Franklin County, Nebraska; Martin E. Chambers, as County Treasurer, Gosper County, Nebraska; John Haney, as County Treasurer, Grant County, Nebraska; Hugo H. Meves, as County Treasurer, Hall County, Nebraska; Jessie Middagh, as County Treasurer, Harlan County, Nebraska; Thomas J. Birchall, as County Treasurer, Hayes County, Nebraska; William E. Conklin, as County Treasurer, Holt County, Nebraska; John Kudrna, as County Treasurer, Hooker County, Nebraska; Albert E. Sutherland, as County Treasurer, Lancaster County, Nebraska; Hazel T. Scoggin, as County Treasurer, Morrill County, Nebraska; Harry R. Young, as County Treasurer, Nemaha County, Nebraska; David G. McAllister, as County
118 Treasurer, Otoe County, Nebraska; Alfred L. Brande, as County Treasurer, Pierce County, Nebraska; William L. Pettcher, as County Treasurer, Platte County, Nebraska; Naomi T. Cotton, as County Treasurer, Red Willow County, Nebraska; Fred Specht, as County Treasurer, Richardson County, Nebraska; Vance Polinek, as County Treasurer, Saline County, Nebraska; D. S. Fase, as County Treasurer, Sarpy County, Nebraska; Peter B. Schmidt, as County Treasurer, Scotts Bluff County, Nebraska; Clarence S. Harey, as County Treasurer, Sheridan County, Nebraska; Edward B. Lyon, as County Treasurer, Sioux County, Nebraska; Francis Cederholm, as County Treasurer, Thayer County, Nebraska; Chas. E. West, as County Treasurer, Thomas County, Nebraska; Nettie Baker, as County Treasurer, Thurston County, Nebraska; Mrs. Hazel Powell, as County Treasurer, Webster County, Nebraska; T. Edward Wyman, as County Treasurer, Wheeler County, Nebraska, are respondents, to show cause, if any there be, why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas C. Munger, United States District Judge this 16th day of January, in the Year of our Lord, One Thousand Nine Hundred Twenty Three. Thos. C. Munger, Judge.

129 [File endorsement omitted.]

120 & 121 In the United States District Court for the District of Nebraska, Lincoln Division.

[Title omitted.]

Due service of all and singular the defendants in this case of the citation issued on plaintiff's appeal to the Supreme Court of the United States is hereby acknowledged and accepted. O. S. Spillman, Atty. Gen. of Neb.; Hugh Lamaster, Asst. Atty. Gen., Solicitors for the defendants. Dated January 18, 1923.

122 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

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Cause before a special court composed of the Honorable Robert E. Lewis, Circuit Judge Eighth Circuit; Honorable Thomas C. Munger, District Judge of the United States District Court for the District of Nebraska, and Honorable Joseph W. Woodrough, District Judge of the United States District Court for the District of Nebraska, sitting in the District Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the October, 1922, term thereof.

[Title omitted.]

Bruce Scott, of Chicago; Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, all of Omaha, Attorneys for Plaintiff.

Clarence A. Davis, of Lincoln, Attorney General for the State of Nebraska; Hugh Lamaster, of Lincoln, Deputy Attorney General

for the State of Nebraska, Attorneys for all and singular the defendants other than J. P. Spearman as County Treasurer of Sarpy County, Nebraska.

E. S. Nickerson, of Papillion, County Attorney of Sarpy County, Nebraska, Attorney for J. P. Spearman, as County Treasurer of Sarpy County, Nebraska.

133 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

NOTICE.

To the above-named defendants and their counsel:

We hand you, annexed hereto, for examination and suggestions of amendments, a condensed statement of the evidence in the above entitled cause material to the questions involved in the appeal taken by Chicago, Burlington & Quincy Railroad Company, a corporation, plaintiff, from the order entered in said court therein, three Judges presiding, Hon. Robert E. Lewis, Circuit Judge of the Eighth Judicial Circuit, Hon. Thomas E. Munger, United States District Judge for the District of Nebraska, and Hon. Joseph W. Woodrough, United States District Judge for the District of Nebraska, on the 10th day of January, 1923, in favor of the defendants, in-
134 cluding the successors in office of those defendant County Treasurers whose terms expired January 4th, 1923 and who were not re-elected but who have been duly made parties hereto, denying and overruling that part of the prayer in plaintiff's petition requesting the court to issue its order of temporary injunction herein against the defendants in this action, and each of them, their employes, agents, successors in office, and all persons acting under their authority, from carrying out their alleged purpose to impose upon plaintiff unlawful and discriminatory valuations of its property for taxing purposes and restraining and enjoining the defendants, and each of them, and their successors in office, from collecting taxes against the plaintiff for 1922 taxation upon a valuation greater than that to be fixed by the court, in accordance with the prayer of the petition, and from issuing distress warrants, commencing suit or imposing any penalty for any excess of the amount fixed by the court, or from collecting interest or costs thereon; and that the court, in that temporary order of injunction so requested, should prescribe the percentage of the actual value of plaintiff's property and of the tax levied which plaintiff should tender as its tentative tax to the several County Treasurers defendants, and for which they should issue their several receipts, excepting for city and village tax which was to be paid in full, for the year 1922, pending the final determination of this suit; and that the court tem-
135 porarily restrain and enjoin and prohibit the defendants severally from demanding, collecting or attempting to collect

from plaintiff any tax for 1922 in excess of the portion thereof the court might fix and determine should be presently paid until the hearing and final judgment of the court herein; and from the finding and order of the said three judges presiding that for all the grievances stated in plaintiff's petition it had an adequate remedy at law by prosecuting error proceedings to the Supreme Court of the State of Nebraska. This statement contains also the oral opinions of the Judges from the bench in this cause, and all the proceedings during the hearing on the application for the temporary injunction.

This we will hereafter present to the said three Judges, or to two of them, who heard said cause, for allowance, approval and settlement as such, with which we will, by præcipe, request the Clerk to include plaintiff's application for a temporary injunction restraining the defendant's Treasurers, their successors in office, and their representatives from paying and collecting or attempting to collect any of the aforesaid tax in excess of the sum of 65% thereof, or such other sum as the court might fix pending the appeal from the orders first hereinabove recited to the Supreme Court of the United States, and during the pendency of the appeal therein, together with the court's order upon said application and plaintiff's bond to make the said order effective; also, to include the petition for appeal and assignments of error, the order allowing said appeal, the citation and acceptance of service and the appeal bond. Dated this 23rd day of January, 1923. Bruce Scott, Byron Clark, Jesse L. Root, J. W. Weingarten, C. W. Krohl, Attorneys for Plaintiff.

STATEMENT OF THE EVIDENCE.

Monday, December 18th, 1922—ten o'clock a. m.

At the hearing of said case before Hon. Robert E. Lewis, Circuit Judge for the Eighth Judicial Circuit, Hon. Thomas E. Munger, United States District Judge for the District of Nebraska, and Hon. Joseph W. Woodrough, United States District Judge for the District of Nebraska, the parties, to maintain the issues upon the plaintiff's application for a temporary injunction, adduced and read in evidence the following documentary proofs and made the following oral stipulations in court:

Plaintiff, to maintain the issues on its part, offered the oral admission of defendants' counsel, made in open court at the hearing of said case, that so much of the testimony adduced by counsel for the Chicago & Northwestern Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railroad Company adduced upon their applications for temporary injunctions in cases pending before the court, depending for their integrity upon proof of over-valuation of said railways for property and under-valuation of all their property in the state for purposes of taxation for 1922, might be received and considered by the court on the application of the Chicago, Burlington & Quincy Railroad Company herein, and counsel for said railroad companies also orally agreed in court that the testimony

offered by the defendants in said actions material to the several causes might be received so far as competent and relevant.

138 EXTRACTS FROM PLAINTIFF'S BILL.

The Petition in Equity before the Court, amongst other allegations, contained the following:

VIII.

Plaintiff in accordance with the statutes of Nebraska made a report to the State Board of Equalization and Assessment, and the county assessors, of the various counties in the state into or through which its lines of railway were constructed and are operated strictly in accordance with the law; that subsequently and on the 15th day of June, 1922, the State Board of Equalization and Assessment fixed the valuation of that part of plaintiff's property in Nebraska by it authorized to be assesed for taxing purposes at $137,589,782.00 on a basis of 2,861.6 miles of single track, the order being in the words and figures following to-wit:

"Office of the Governor, Lincoln, Nebraska.

June 15th, 1922.

"The State Board of Equalization reconvened at the office of the Governor at 10.30 A. M., all members present, the Governor in the chair. The question of railroad values for the year 1922 was then discussed by the Board, and the following resolution was unanimously adopted.

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said state, and having given due and full consideration to the returns furnished said Board by the several railroad companies and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand, and supplies, monies, credits, franchises, and all other property

139 of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are able to obtain, do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.	Total actual valuation.
Chicago, Burlington & Quincy....	2,861.60	$137,589,782.00

That subsequently and during the meeting of the State Board, as provided by Section 5901, the said Board by complaint was notified that the assessing officers and Equalization Boards in their respective counties for taxation purposes for the year 1922 assessed all property within their jurisdiction at not to exceed fifty per cent of the actual value of such property. That the said State Board then well knew that the constitution and laws of Nebraska provided that all property in the state subject to taxation should be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property not exempted by law from taxation; that if the valuation of complainant's property in 1922 for taxation purposes should not be reduced to the same percentage of value that other property subject to taxation in said state has been valued for assessment purposes by the several county assessors and boards of equalization in 1922, or unless the
140 valuation of all other such property should be increased from fifty per cent of its value to its actual value, that is the valuation should be doubled, complainant would be denied the equal protection of the law guaranteed by the Constitution of the United States and the State of Nebraska, and its property would be taken for public purposes without just compensation and without due process of law, in derogation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and of sections 3 and 21 of Article 1 of the Bill of Rights of the Constitution of the State of Nebraska.

That notwithstanding all of said knowledge and notice of inequality of the assessment of carrier's property as compared with that of all other classes of property the said State Board as its meeting made no change in the assessment of the value of your complainant's property either by reducing it to the same basis as that upon which all other property was valued nor by increasing the assessed value of all other property to its actual value as required by the constitution and laws of the State but did make some slight material equalizations as between counties and by its final decision and resolution as of August 2nd, 1922, intentionally maintained and preserved the inequalities in valuation of the several classes of property and retained the valuation of your complainant's property at 137% of its
141 actual value, while in the final adjustment all other property in the State of Nebraska (including real estate) was assessed not to exceed sixty-five per cent of its actual value. The said State Board thereupon determined the amount of all taxes required for state purpose and made a levy therefor of such as were within its jurisdiction.

IX.

Plaintiff further alleges that pursuant to Section 5905 aforesaid the State Board complied therewith and immediately on said August 2nd, 1922 certified said levy and the results of its equalization to the respective county clerks and deprived plaintiff of any opportunity of either adopting or pursuing any legal procedure to review

the acts of said State Board either by error or praying for an injunction against its illegal acts as herein set forth or otherwise.

Plaintiff further alleges that the valuation per mile of plaintiff's property so fixed by the State Board of Equalization and Assessment was forthwith by the county clerks transcribed upon the tax lists of their respective counties against plaintiff and its property; that the valuation per mile so illegally fixed by the State Board of Equalization and Assessment by the county clerks has been applied per mile to the levies provided by law for raising revenue for state, county, township, school district, and other purposes, and the county treasurers will force plaintiff to pay those taxes on said grossly
142 excessive and unlawful valuations unless restrained by the order of this Court.

That the treasurers defendant are not authorized to accept any tender made by plaintiff of the portion of the taxes which plaintiff acknowledges to be due but by law must collect the full amount certified to them.

That the said taxes become a lien on plaintiff's property on November 1st and will be due and delinquent December 1st, 1922, and that said defendants are now demanding payment of said taxes in full. Plaintiff alleges that no complaint is made herein as to taxes levied for city and village purposes.

X.

Plaintiff further alleges that the defendant Tax Commissioner, W. H. Osborne, Jr., and the State Board of Equalization and Assessment have notwithstanding plaintiff's yearly complaint, continually decreased annually the assessed value of all property other than Railroad property, but more particularly for this suit commencing with the year A. D. 1920, and during said time has likewise continually increased the valuation of plaintiff's property within the State of Nebraska, which is accurately described by the following figures:

Total Value of Lands and Improvements in Nebraska:

Year 1920, $2,144,473,350.00 being 68% of its actual value.
Year 1921, 1,831,048,877.00 being 53% of its actual value.
Year 1922, 1,753,312,309.00 being 62% of its actual value.

C. B. & Q. total valuations for said years are:

Year 1920	$131,755,655.00
Year 1921	131,755,725.00
Year 1922	137,589,782.00

143 That during each of said years the actual value of plaintiff's property in the State of Nebraska did not exceed $100,000,000.00.

The actual result being that the lands and all other property did not pay taxes to exceed 50% of their actual value and will not exceed

65 per cent for the year A. D. 1922; while this plaintiff will, if the assessment now complained of is permitted to stand, pay taxes at 137% of its actual value.

XI.

Now comes the plaintiff and by leave of court amends its Bill by substituting for Paragraph XI., page 27, the following:

Plaintiff alleges that its railroad extends through the following counties in the State of Nebraska, and that the amount of the tax levied upon the valuation herein complained of and the illegal .5255 percentage thereof in each county resulting from the wrongful scheme and rule of valuation, which the respective treasurer of each county, defendant herein, is demanding and threatening to collect with the legal portion, in the performance of their alleged respective duties, are set forth in the columns following, to-wit:

County.	Tax levied.	Illegal part.
Adams	$41,507.93	$21,812.42
Antelope	8,660.55	4,551.12
Blaine	18,631.91	9,791.07
Box Butte	39,489.07	20,751.48
Buffalo	16,134.34	8,478.60
144 Burt	8,536.14	4,485.74
Cass	33,922.44	17,826.24
Cedar	6,115.01	3,213.44
Chase	9,413.41	4,946.75
Cheyenne	19,200.37	10,089.79
Clay	43,618.56	22,921.55
Colfax	1,489.61	782.79
Custer	61,138.76	32,128.42
Dakota	12,707.13	6,677.60
Dawes	23,755.86	12,483.71
Dawson	1,486.99	781.41
Dixon	10,135.11	5,326.00
Dodge	15,477.62	8,133.49
Douglas	14,508.03	7,623.97
Dundy	50,971.05	26,785.29
Fillmore	53,768.21	28,255.19
Franklin	36,310.91	19,081.38
Frontier	20,481.78	10,763.18
Furnas	51,165.77	26,887.61
Gage	51,430.94	27,026.96
Garfield	1,572.57	826.39
Gosper	10,565.71	5,552.28
Grant	23,312.07	12,250.49
Greeley	18,927.49	9,946.40
Hall	19,328.98	10,157.38
Hamilton	26,727.49	14,045.30
Harlan	66,728.73	35,065.95

County.	Tax levied.	Illegal part.
Hayes	3,657.76	1,922.15
Hitchcock	44,871.83	23,580.15
Holt	8,904.30	4,679.21
Hooker	25,441.01	13,369.25
Howard	14,706.43	7,728.22
Jefferson	23,319.62	12,254.46
Johnson	28,172.00	14,804.38
Kearney	38,350.86	20,153.37
Lancaster	71,540.18	37,594.36
Lincoln	34,891.20	18,335.32
Merrick	9,709.18	5,102.17
Morrill	28,703.66	15,083.77
Nemaha	14,265.39	7,496.16
Nuckolls	26,166.16	13,750.31
Otoe	18,718.08	9,836.35
Pawnee	25,722.12	13,516.97
Perkins	25,272.56	13,280.73
Phelps	31,693.22	16,654.78
Pierce	8,471.05	4,451.53
Platte	2,489.35	1,308.15
Polk	1,165.48	612.45
Red Willow	58,486.17	30,734.48
Saline	48,741.51	25,613.66
Sarpy	34,965.27	18,374.24
Saunders	42,247.78	22,201.20
145 Scottsbluff	25,133.48	13,207.64
Seward	27,448.81	14,424.34
Sheridan	35,626.58	18,721.76
Sherman	26,522.10	13,937.36
Sioux	10,630.76	5,586.46
Thayer	24,471.39	12,859.71
Thomas	32,323.45	16,985.97
Thurston	13,544.89	7,117.83
Valley	15,015.67	7,890.73
Webster	37,728.55	19,826.45
Wheeler	1,649.44	866.78
York	25,761.76	13,537.80

Because of official tax statements not being received for the year 1922 plaintiff on information and belief alleges that for the year 1922, the taxes for the two following counties, with the illegal portion will appear as follows:

County.	Tax levied.	Illegal part.
Butler	$15,000.00	$7,882.50
Richardson	35,000.00	18,392.50

Endorsed on margin of said Par. XI: Amended by leave given December 2, 1922.

XII.

Plaintiff further alleges that the State Board in its resolution adopted on June 15th, 1922, valuing and assessing plaintiff's property in Nebraska, recites that there was considered, with other classes of property, plaintiff's moneys, credits, net earnings, dividends paid, the capital stock and market value thereof. That as to this plaintiff alleges that it has a value composed of property consisting of credits, investments and securities of various designations which are
146 held by it and which have no relation to the operation of the railroad in Nebraska or elsewhere, nor has it added to the value of the road or the rights by it exercised in the State of Nebraska either for the year 1922 or prior years. It also has a definite situs in other states and for the year A. D. 1922 it was there subject to assessment and taxation separately and apart from the railroad at the places where it was so assessable and taxable in conformity to the laws of the respective states where such properties are situated, they being as follows:

	Estimated value.
Elevator Investments, Chicago and Burlington	$326,844.59
Coal Investments, Illinois	3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control	27,922,783.87*
Cash & Cash Assets—Balance	7,104,797.46
Local property, Illinois	11,500,000.00
Local property, Iowa	645,000.00
Local property, Iowa (Woodbury County)	13,820.00
Local property, Wisconsin	48,000.00
Local property, Minnesota	77,500.00
Local property, Missouri	7,867,500.00
Local property, Kansas	267,300.00
Local property, Nebraska	2,171,884.00
Local property, South Dakota	35,320.00
Local property, Wyoming	152,200.00
Local property, Colorado	516,150.00
North Platte to Bridgeport, Nebraska	229,327.00
	$73,677,476.14

147 That all of said properties and the income therefrom are reflected in the market value of plaintiff's stocks, bonds, surplus and dividends, and the value of said property so elsewhere assessable and taxable for the year A. D. 1922 aggregates $73,677,476.14. That to aid the Board in arriving at a just valuation of plaintiff's

*Includes cost of Colorado & Southern Ry. Stock $19,643,451.88.

property within the State of Nebraska plaintiff with other items submitted the foregoing items of property situate beyond the State of Nebraska and that locally assessed in Nebraska and beyond the Board's jurisdiction, but notwithstanding said statement so furnished, it intentionally, systematically but erroneously included said property in ascertaining and assessing the value of your plaintiff's property for said year 1922, and likewise for the years A. D. 1920 and 1921. That the same was included within said valuation or that percentage thereof which the said State Board took as representing the pro rata therein, which should be taken as the value of plaintiff's property in the State of Nebraska for each of the aforesaid years. In this your plaintiff further alleges that in so far as said properties were considered by the State Board and taken as a part of the valuation of plaintiff's property, their action was illegal and void and that the value of said properties in the aforesaid sum should have been deducted before ascertaining and assessing that part of the value which belonged to the State of Nebraska. That plaintiff is entitled
148 to a reduction of its valuation so made by the State Board for taxation by the percentage allocated to the State of Nebraska by the Board which plaintiff alleges is not less than twenty-three per cent for the year A. D. 1922, or a total of $16,945,819.00.

XIII.

Plaintiff further states that the State Board of Equalization and Assessment and the several county assessors and county boards of equalization of the state of Nebraska, have for many years last past assessed and valued farm land in the state of Nebraska at much less than the true value thereof; that the provision in the statutes of Nebraska that the real estate shall be assessed separately from the improvements thereon, permits the local assessors and taking officers to and on information and belief plaintiff alleges that they almost uniformly do assess the improvements at but a small fraction of their actual value, to wit, not to exceed ten to twenty-five per cent of their actual value, and where buildings thereon, frequently expensive in character, are constructed upon land, the local assessors for years have ignored such improvements, and do not assess them at all. That during the year 1920 farm lands in the State of Nebraska constituted more than fifty-five per cent of the value of all property in the state, other than railroad property, and the county assessors and the State Board of Equalization and Assessment fixed for tax-
149 ing purposes the value of such real estate at but sixty-eight per cent of the true value of such farm land; that the valuation of farm land in the State of Nebraska as returned by the county assessors of the several counties, and as adjusted and equalized by the State Board of Equalization and Assessment for the year 1921 was fixed at but forty-seven per cent of the true value of said farm lands; that such undervaluations for taxing purposes by said officials was the result of a systematic, intentional, notorious and continuous undervaluation of farm lands by the several county assessors and the

State Board of Equalization and Assessment for taxing purposes; that in 1922 all farm lands in the state of Nebraska were likewise undervalued for taxing purposes, and their valuation fixed at not to exceed 62 per cent of their true value by the local taxing authorities, and the State Board of Equalization and Assessment knowingly and intentionally joined and participated in further pursuance of the scheme and plan that had obtained for many years, and yet obtains in the State of Nebraska, to undervalue farm lands for taxation for the purpose of relieving such lands of their just share of the taxing burden in the state by refusing to raise said valuation or to equalize it with the properties of your plaintiff. In that behalf plaintiff alleges that the defendant Osborne, as Secretary of the State Board of Equalization for the year 1920 published a statement showing the result of the valuation by the county assessors as equalized by the State Board of Equalization with respect to farm lands as follows:

"The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the state have placed a value on lands and improvements which average over 68 per cent of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68 per cent of the actual value as established by the ratio process."

And plaintiff alleges and charges that for the year 1920 the valuation of farm lands for taxing purposes in Nebraska was equalized and fixed by the State Board of Equalization at only 68 per cent of the true value thereof in violation of the Constitution and Laws of the State of Nebraska, as above set forth.

Plaintiff further alleges and charges that the adoption of said valuation of 68 per cent for the year 1920, on real estate was intentional and deliberate and pursuant to concerted action by the State Board of Equalization and the several county assessors and in that behalf alleges and charges that the said State Board of Equalization made and published a statement of the result of its action as a Board of Equalization for the year 1920 as follows, to wit:

"In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bona fide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested by the Board at the

meeting of the assessing officials of the counties held July 20, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

Under this plan of equalization, the State Board has the combined judgment as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Board has averaged 68 per cent of the real value, as determined by the ratio process, and the State Board adopted this 68 per cent as the basis for equalizing purposes."

Plaintiff further alleges and charges that the State Board of Equalization and the County Assessors of the several counties, pursuant to said purpose and plan to undervalue all farm lands in the state for taxing purposes for the year 1921 met in convention at the City of Lincoln on the 18th day of March, 1921, and adopted a resolution in words and figures following, to wit:

"*Resolution Adopted at State Assessors' Meeting March* 18, 1921.

At a meeting of the county assessors, held at Lincoln, Nebraska, on March 18, 1921, the following resolution, introduced by Harry W. Scott, of Pawnee City, was adopted:

'Whereas, there has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average 15 per cent reductions under 1920 real estate values.

152 'Therefore, be it resolved, that it be the sense of this meeting that the aggregate return of the value of real estate in each county be returned to the State Board at not to exceed a 15 per cent reduction.

'It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

'Dated this 19th day of March, 1921. (Signed) G. L. Munford, Secretary-Treasurer.'"

Plaintiff further alleges and charges that the defendant, Osborne, as Tax Commissioner, provided each and every county assessor in the State of Nebraska with a copy of said resolution and stated to said assessor in writing as follows:

"The above and foregoing is a verbatim copy of a resolution adopted by the county assessors of the State, at their meeting, held in the City of Lincoln, on March 18, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, and where the occasion demands, the State Board

will not shirk its duty to fairly and equitably raise or lower any county, to the end that each bears its just relation, one to the other."

Plaintiff further alleges and charges that the said several county assessors, pursuant to said express purpose, returned the valuation of real property in their respective counties at only about 53 per cent of the true value thereof, and that the State Board of Equalization upon receiving said returns from the said several counties equalized the valuations on real property so that the average valuation does not exceed 53 per cent of the true value of real property in the
153 State of Nebraska for the year 1921; that said concerted action by the said county assessors and the State Board of Equalization to return a valuation for taxing purposes on real property of only about 53 per cent of the true value thereof, was in violation of the Constitution and Laws of the State of Nebraska and in violation of the duties of said officials and in violation of the rights of the plaintiff, whose property has been fixed by said Board of Equalization at more than the true full actual value thereof.

That because the taxing authorities of the State of Nebraska were cognizant of the fact that the railroad companies of the state of Nebraska were making extensive investigations to bring into view the truth with respect to the undervaluation of farm lands in the state of Nebraska, the State Tax Commissioner issued his instructions to county and precinct assessors in Nebraska in 1922, advising them that it was their duty, as follows:

"We will first take up the Rural Real Estate Assessment which must be made again this year. Those of you who are familiar with the old Revenue Law will recall that prior to 1921, real estate was only assessed once every four years but the Legislature of 1921 passed a law requiring that the new assessment pertaining to real estate should be made in 1921, again in 1922 and every two years thereafter. Real estate generally, was reduced approximately fifteen per cent uniformly over the state in the year 1921. This emergency legislation on the part of the Legislature was made in the hope that some relief could be given the owner of real property in the way of taxes, but such was not the case, for, notwithstanding the fifteen per cent reduction in the valuation of real property uniformly over the state, this reduction was not reflected in the real estate tax receipt, nor could it be, for the reason that there is obviously only
154 one way to accomplish this result and that is lower the expenditures of the state and its taxing subdivisions. We are compelled to make another assessment of real estate this year, 1922, which will stand for two years or until 1924 when another assessment will be made. The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes, namely at its actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

Plaintiff alleges that the purpose and intent of issuing the instructions in the above form was to encourage county and precinct assessors to further depreciate the value of real estate for taxing pur-

poses under the undervaluations of the preceding years, and that in harmony with such intent and instructions, the county assessors did further in 1922 undervalue farm lands for the purpose of taxation.

XIV.

Plaintiff further alleges that in accordance with Section 5977 the County Assessor in each county in the State of Nebraska prepared an abstract of the assessment rolls of his county, and forwarded it to the State Board of Equalization and Assessment before the 10th day of July, 1922; that said abstracts disclose the total number of acres of taxable land in each county; the aggregate assessed value of all taxable land; and the average assessed value per acre of all taxable land; and that said abstracts show, and the plaintiff alleges the fact to be, that there were at the times hereinbefore mentioned, and now are, in the State of Nebraska, forty-six million four hundred twenty-
one thousand six hundred forty-seven (46,421,647) acres of
155 taxable land.

Plaintiff further alleges that the said abstracts forwarded by the county assessors to the State Board of Equalization and Assessment also disclose the aggregate assessed value of all town lots and personal property in each county, and the total assessed value of all taxable property therein.

Plaintiff further alleges that in accordance with Section 5901 the State Board of Equalization and Assessment met at the State Capitol in the month of July, 1922, and proceeded to examine the abstracts of property assessed for taxation in the several counties of the State, and did equalize such assessments as between counties, but that in such equalization the said Board made no substantial change in the aggregate assessed valuation of taxable land or other real estate or personal property.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all taxable land, including improvements thereon, in the State of Nebraska for 1922 is One Billion Seven Hundred Fifty-three million, Three Hundred Twelve Thousand, Three Hundred Nine Dollars ($1,753,312,309) and that the average assessed value per acre of all taxable land, including improvements thereon in the State of Nebraska for 1922 is Thirty-seven and 77/100 Dollars ($37.77).

Plaintiff further alleges that the actual value of all taxable land, and improvements thereon, in the State of Nebraska for the
156 year 1922 in the market in the ordinary course of trade was in excess of the aforesaid sum, and that the actual value thereof in the market in the ordinary course of trade was at least Two Billion Six Hundred Ninety-seven Million, Four Hundred Three Thousand, Five Hundred Fifty-one and no/100 Dollars ($2,697,403,551.00), or at least Fifty-eight and 10/100 Dollars ($58.10) per acre.

Plaintiff further alleges that said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all town lots, including improvements thereon, in the State of Nebraska for the year 1922 is Five Hundred Thirty-nine Million Seven Hundred

Thirty Thousand Seven Hundred Eighty-five and no/100 Dollars ($539,730,785.00).

Plaintiff further alleges that the actual value of all town lots, and improvements thereon, in said State of Nebraska for the year 1922 was and is in excess of the aforesaid equalized value and instead thereof the actual value in the market in the ordinary course of trade was at least Eight Hundred Thirty Million, Three Hundred Fifty-five Thousand Fifty-three and 80/100 Dollars ($830,355,053.80).

Plaintiff further alleges that the said abstracts as equalized and the resultant tax lists show that the aggregate assessed value of all personal property other than property subject to assessment by the State Board of Equalization and Assessment in the State of Nebraska for 1922 is Five Hundred Thirty-one Million Two Hundred Forty-five Thousand One Hundred Eight-six and no/100 Dollars ($531,-
157 245,186.00), that the actual value of all said personal property in said State for the year 1922 in the market in the ordinary course of trade was in excess of the aforesaid equalized value and instead thereof the actual value was at least Eight Hundred Seventeen Million Three Hundred Thousand Two Hundred Eighty-six and no/100 Dollars ($817,300,286.00).

Plaintiff further alleges that by the action of the assessors of the various counties of the State of Nebraska, and by the action of the State Board of Equalization and Assessment, the value of said taxable land in the State of Nebraska so fixed for the purpose of assessment and taxation as the basis or taxable value upon which to compute taxes under the laws of the State of Nebraska, in truth and in fact represents not to exceed Sixty-Five per cent (65%) of the real value of said taxable land in the market in the ordinary course of trade and of the reasonable value thereof; and plaintiff avers that the taxable lands in the State of Nebraska constitute and comprise Fifty-Five per cent (55%) of the taxable property in the State of Nebraska subject to assessment and taxation and comprise sixty-one per cent (61%) of said taxable property exclusive of railroads.

Plaintiff further alleges that the value of its property in the State of Nebraska subject to assessment by the State Board of Equalization and Assessment under the laws of the State of Nebraska, does not exceed One Hundred Million Dollars ($100,000,000.00); that plain-
tiff owns and operates 2,861.60 miles of railroads in the State
158 of Nebraska, and that the value of its said railroad property so subject to assessment by said Board therefore does not exceed Thirty-Four Thousand Nine Hundred Forty-Five and 45/100 Dollars ($34,945.45) per mile; but this plaintiff avers that the taxable value of its property subject to assessment by said Board under the laws of the State of Nebraska, when considered in the light of the assessment of taxable land and other real and personal property, except property subject to assessment by the State Board of Equalization and Assessment, in said State, as hereinbefore averred, is not in excess of Twenty-Two Thousand Seven Hundred Fourteen and 54/100 Dollars ($22,714.54) per mile, aggregating $64,999,927.66 for the State of Nebraska; and plaintiff avers that it is willing to,

and will, pay such lawful taxes as are levied upon said last aforesaid sum or value per mile, or upon such other sum as this Court may determine to represent the fair and equitable taxable value of its property per mile as compared to the tax burdens imposed upon taxable land in said State.

That the systematic assessment upon such basis is, and for many years past has been, a matter of public notoriety in the State; that the fact that such assessors have indulged in such habitual, intentional systematic and general custom in so assessing taxable land and other real estate and personal property at materially less than its value in the market in the ordinary course of trade, was known to the State Board of Equalization and Assessment at and prior
159 to the time it assessed plaintiff's property; that notwithstanding this knowledge on the part of the said State Board of Equalization and Assessment, it intentionally assessed the plaintiff's property subject to assessment by it at One Hundred Thirty-Seven per cent (137%) of its actual value.

XV.

Plaintiff further alleges that the action of the Board of Equalization and Assessment, and the several county assessors and county boards of equalization in undervaluing farm lands for the purpose of taxation pursuant to said intentional, concerted and pre-arranged plan, while at the same time valuing the property of the plaintiff at one hundred per cent and more of its true value for taxing purposes, constitutes an unlawful discrimination against plaintiff, and compels it to bear more than its just proportion of the burden of taxation in the State of Nebraska in violation of the constitution and laws of the State of Nebraska, as above set forth, and in violation of the guarantees contained in the Enabling Act above referred to as ratified and confirmed by the electors of the State of Nebraska. That the action of the State Board of Equalization and Assessment, and of the several county authorities in intentionally and systematically undervaluing farm lands, which constitute fifty-five per cent of the taxable property of the State, while requiring plaintiff to pay
160 taxes on the full actual value and more of its property, constitutes an unjust and an unlawful discrimination against plaintiff, and denies to plaintiff the equal protection of the law guaranteed by the Constitution and laws of Nebraska, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, and deprives plaintiff of its property without due process of law, takes its property for public use without compensation in violation of the Fourteenth Amendment to the Constitution of the United States.

XVI.

Plaintiff further alleges that the intentional and systematic undervaluation by the State Board of Equalization and the several county assessors of farm lands within the State of Nebraska, being about fifty-five per cent of the total taxable property in said state, at only

62 per cent of the true value thereof, for taxing purposes, while valuing the property of the plaintiff at one hundred thirty-seven per cent or more of its true value, and requiring plaintiff to pay taxes on said value constitutes and is an unlawful burden upon interstate commerce, in that more than 68 per cent of the commerce carried by plaintiff over the lines of its railroad in the State of Nebraska is interstate in character; that all taxes which plaintiff is required to pay in the State of Nebraska are chargeable to expenses of operation, and that for the defendants, by said unlawful and intentional
161 discrimination in valuation between plaintiff and other taxpayers in the State, to impose an undue and unlawful expense upon the handling of interstate commerce, constitutes and is an unlawful discrimination against interstate commerce, and an unlawful burden thereon in violation of the Constitution of the United States.

XVII.

Plaintiff further alleges that it is entitled to the equal protection of the laws of the State of Nebraska; that said laws of the State of Nebraska make it the duty of the State Board of Equalization and the several county assessors to fix valuations of all property in the State at true, full, actual value; that the said State Board of Equalization has full power to correct any inequality of valuations which may be returned by the several county assessors, and it was the duty of said State Board of Equalization so to do, but plaintiff alleges that the said State Board of Equalization, in violation of the Constitution and Laws of the State of Nebraska, not only did not change said valuation so as to put plaintiff upon a basis of equality with other taxpayers, as required by law, but the said State Board of Equalization intentionally cooperated with the said county assessors for the purpose of returning the value of farm property at only 62 per cent of the true value thereof for taxing purposes, while requiring the plaintiff to pay taxes upon more than the full actual
162 value of its property within the state; that the said State Board further purposely and intentionally refused to correct an error in plaintiff's return to the State Tax Commissioner for the use of the State Board, which consisted of plaintiff's return on the prescribed forms of the State Board designated as Form "G" and Form "9," in that in Form "G" the operating expenses in Nebraska were given as $27,420,906.19, when they actually were $31,289,319.97, the difference being $3,868,413.68. That by reason of said error the net income in Nebraska for the year 1921 was greater than the actual net income by the last aforesaid amount. That proof of said error was made to the State Board of Equalization and Assessment, and in explanation thereof, which plaintiff now alleges to be the fact, upon March 15th, A. D. 1922, the principal office building of plaintiff in the City of Chicago, County of Cook, Illinois, was practically destroyed by fire, with a large part of the records, including part of those from which it was necessary to formulate and answer the questions included in the aforesaid forms "G" and "9";

that the data necessary for said information had to be re-assembled from the different departments and when so re-assembled it developed the error hereinbefore set forth; that said error was not disclosed by the re-assembling of said data until a short time previous to the date of the hearing before the said State Board upon the complaint of this plaintiff for equalization. That notwithstanding said palpable error and the proof thereof before the State Board,
163 which was not controverted, the State Board refused to make any adjustment or equalization of plaintiff's valuation.

That the said several actions of the taxing authorities mentioned denies to plaintiff equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XVIII.

Plaintiff further alleges that it has no remedy at law in the premises; that heretofore the Supreme Court of the State of Nebraska, by repeated decisions, has held that a taxpayer whose property is assessed at one hundred per cent or more of its true value, while the property of other taxpayers is valued at only a fraction of true value, has no remedy save and except to use its best endeavors to have the taxing officials raise the valuations of the property of other taxpayers, of which notice must be given, which procedure is futile and is not an adequate remedy at law.

XIX.

Plaintiff further alleges that it has always been and now is willing to pay its lawful share of the taxes of the state, and in that behalf plaintiff alleges that it is willing and hereby offers to pay to the several county treasurers as soon as said taxes become due and payable to said treasurers all taxes lawfully levied against its property based upon a valuation not exceeding sixty-five per cent
164 upon a valuation of plaintiff's property of $100,000,000.00, or 0.4745 per cent of the tax on the valuations certified to the several county clerks and the county treasurers by the State Board of Equalization and Assessment for the year 1922, and plaintiff alleges that it will keep said offer good and will pay said taxes when due upon said basis, and will pay all city and village taxes in full.

XX.

Plaintiff further alleges and charges that said unlawful taxes constitute a lien against plaintiff's property and a cloud upon plaintiff's title to said property, that the lien of said taxes against plaintiff's property will unlawfully burden plaintiff in its ability to finance its business as a common carrier of interstate commerce, and cripple, injure, and impair the plaintiff in the operation of its line of railroad as a common carrier of interstate commerce. And plaintiff further alleges that the defendant county treasurers, and each of them, will issue numerous distress warrants against the plaintiff and against its property and will cause to be instituted enormous

numbers of suits against the plaintiff for the collection of said unlawful and discriminatory taxes unless each of them, their successors, agents, employes and all other persons acting by, through or under their authority or direction be restrained from so doing by order of this court.

165 SUMMARY OF C., B. & Q. EXHIBITS 1 AND 3.

Plaintiff offered and there was received in evidence, without objection, C., B. & Q. Exhibits "1" and "3," being the affidavits of A. W. Scribner and of Pollock Parmele, with their attachments.

Scribner testified that under his supervision and direction an investigation was made with respect to the value of property covered by 1,783 mortgages relating to tracts of forty acres or more of land within the State of Nebraska, in sixty-six counties traversed by the Union Pacific and Burlington railway lines, filed between March 31, 1920 and April 1, 1922.

No mortgages included in compilation excepting those in which Loan & Trust Companies were mortgagees.

Total acreage	369,541 acres
Total amount of mortgage consideration	$13,282,664
Number of Loan Companies	44
Mortgagees' appraised value	$40,523,743
Owners' appraised value	$49,664,610
Assessed valuation of same tracts of land for 1921	$22,287,278
Assessed valuation of all of those lands in 1922	$21,664,378
Percentage of assessed value to owners' appraisal in 1921	44.9%
In 1922	43.7%
Percent of assessed value to Loan Co.'s value in 1921	55%
In 1922	53.5%

This affiant further stated that the details of the information were in his possession as to every tract of land referred to but
166 were too cumbersome to attach.

Parmele testified that he re-checked or caused to be re-checked, under his direction and supervision, all of the transactions referred to in Scribner's affidavit but eliminated all mortgages filed between March 31, 1920 and March 31, 1921, so as to bring into view the record between April 1, 1921 and April 1, 1922, which show 1,300 mortgages.

Acreage mortgaged	268,522 acres
Consideration	$9,885,152
Owners' appraised valuation	$36,604,903
Loan Co.'s valuation	$29,406,343
Assessed valuation in 1922	$16,295,888
Percent assessed value to owners' valuation in 1922	44.5%
Percent of assessed value to Loan Co.'s valuation in 1922	55.4%

The attachments to the affidavits of Scribner and Parmele are identical save and excepting with respect to the recitation of: "Less mortgages filed March 31, 1920 to March 31, 1921" at the bottom of the attachment to Parmele's affidavit and the figures that are extended in two columns to the right of the quoted language.

The attachment to Parmele's affidavit is in the following words and figures:

(Here follows Exhibit 13 to Parmele's affidavit, marked side folio pages 167 and 167½.)

168 SUMMARY OF C., B. & Q. EXHIBIT 2.

Plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "2", being another affidavit of A. W. Scribner revealing that in 53 counties in Nebraska he caused an investigation to be made to ascertain the consideration recited in warranty deeds recorded for sales of real estate in tracts of forty acres or more between March 1, 1921 and April 1, 1922, excluding those transfers with a nominal consideration as "one dollar" or "for love and affection", and caused an exhibit to be made tabulating the facts.

Total transfers	2,752
Total acreage	667,415 acres
Total consideration	$35,801,350
Assessed valuation of these tracts for 1922	$16,616,722
Average sale price per acre	$53.64
Average assessed valuation of these farms for 1922, per acre	$24.89
Percentage of assessed valuation of farm land to sales consideration	46.5%

The tabulation thus prepared and attached to said affidavit is as follows:

(Here follows tabulation marked side folio page 169.)

170 SUMMARY OF C., B. & Q. EXHIBIT 4.

The plaintiff produced and offered and there was received and read in evidence, without objection, C., B. & Q. Exhibit "4", consisting of 138 separate affidavits, 137 of these affidavits being made by individuals long resident in the counties wherein they reside; that they are well acquainted with real estate and its value in the counties of their residence and they state the actual, fair, cash value of farm land in their respective counties on April 1, 1922. All of the affiants own land in the county of their residence. Amongst these affiants are men engaged in the abstract and real estate busi-

Exhibit 13 to Parmele's affidavit.

RECAPITULATION OF LISTS OF MORTGAGES TO MORTGAGE, LOAN AND TRUST COMPANIES DATED BETWEEN MARCH 1920 AND MARCH 1922.

AND A COMPARISON OF THE ASSESSED VALUATION OF THE LANDS UNDER MORTGAGE, WITH THE APPRAISEMENTS OF THE OWNERS' AND LOAN COMPANIES.

Name of County.	Number of Mortgages.	Total Consideration of Mortgages.	Number of Acres Mortgaged.	Valuation by Owners.	Appraisement by Loan Companies.	Assessed Valuation. 1921	Assessed Valuation. 1922	Per Cent Assessed Valuation to Owners' Valuation. 1921	Per Cent Assessed Valuation to Owners' Valuation. 1922	Per Cent Assessed Valuation to Loan Co's. Appraisement. 1921	Per Cent Assessed Valuation to Loan Co's. Appraisement. 1922.
Adams.	20	$ 119,000	3,243	$ 416,450	$ 374,987	$ 224,762	$ 223,665	55.9%	53.7%	59.9%	59.7%
Banner	12	54,800	5,240	275,000	176,470	55,600	42,534	20.4	15.6	31.5	24.1
Box Butte	3	15,560	1,120	54,400	51,200	6,700	8,900	12.3	16.4	13.1	17.4
Boone	32	284,700	5,805	911,229	749,028.75	407,260	407,290	44.7	44.7	54.4	54.4
Buffalo	21	126,200	3,576	471,518.25	360,790	179,227	165,597	38.1	35.1	49.8	45.9
Burt.	70	717,700	11,518	2,707,602.	2,379,770	1,357,552	1,384,242	50.1	51.1	57.0	58.1
Butler	34	285,800	5,053	1,063,130	822,015	465,399	464,855	43.7	43.7	56.6	56.5
Cass	48	478,725	7,906	1,753,005	1,427,555	888, 711	853,802	48.5	45.3	59.5	59.8
Cedar	110	937,800	18,484	3,298,990	2,862,115	1,858,742	1,670,135	56.	50.0	64.1	58.0
Chase	5	30,000	2,070	98,000	83,600	28,055	26,020	28.6	26.6	31.7	29.4
Cheyenne	40	242,200	18,931	1,097,070	821,825	358,720	359,185	32.7	32.8	43.6	43.7
Clay	35	210,600	4,392	861,560	751,260	331,381	346,140	38.5	40.2	44.1	46.1
Colfax	25	205,500	3,667	860,400	694,326.75	427,705	426,146	49.7	49.5	61.4	61.4
Custer	79	450,912	16,364	1,784,170	1,350,125.	565,645	588,610	31.1	31.3	41.8	41.4
Dakota.	43	352,300	6,593	1,230,376	1,025,814.	652,751	651,055	53.1	52.9	63.6	63.4
Dawson	15	66,000	4,018	226,750	191,570	100,820	94,175	44.4	45.5	52.6	49.1
Deuel	14	82,300	3,840	291,200	213,200	105,475	107,975	36.2	37.1	49.5	50.7
Dixon	106	739,900	14,419	2,596,728.50	2,181,667.30	1,202,453	1,012,900	46.3	39.0	55.1	46.5
Dodge	46	371,600	6,018	1,467,693.	1,112,715	686,940	649,812	46.8	44.3	61.7	58.4
Dundy	18	88,800	7,438	298,500	248,800	94,375	83,290	31.6	27.9	37.9	33.5
Franklin	5	21,800	1,122	106,500	75,800	39,700	34,900	37.2	32.8	52.3	46.0
Frontier.	18	58,700	5,790	262,600	185,700	80,661	80,307	30.6	30.6	43.6	43.4
Furnas	2	5,000	700	40,550	36,340	15,855	17,525	39.1	43.2	43.7	48.2
Gage	44	348,750	6,160.50	1,133,615	1,061,590	503,756	512,100	44.5	45.2	47.4	48.2
Garden	11	66,700	4,427	284,985	192,200	99,995	97,955	35.1	34.3	52.0	50.9
Garfield	4	16,700	2,915	65,571	49,647.25	31,329	30,972	47.8	47.3	63.1	63.0
Gosper	6	22,000	1,360	149,225	124,800	49,950	51,581	33.5	22.2	40.0	41.3
Greeley	38	229,400	8,655	849,720	659,700	349,858	290,285	41.2	34.1	53.	44.0
Hall	21	131,600	3,346	457,926	352,687.50	198,885	197,995	43.2	43.3	55.0	54.6
Hamilton	74	359,250	8,609	1,447,530	1,171,430	781,618	757,541	52.6	52.3	65.0	64.7
Harlan	7	46,000	1,434	127,500	108,590	57,025	55,020	44.7	43.2	52.5	50.7
Hayes	8	32,000	2,780	106,600	91,500	42,080	33,914	39.4	31.8	45.9	36.0
Howard	12	64,100	1,938	226,500	165,450	92,275	92,275	40.7	40.7	55.8	55.8
Hooker	3	6,000	1,731	21,900	15,700	6,260	8,260	28.6	28.6	39.9	39.9
Jefferson.	25	183,300	5,144	607,480	524,887	322,200	316,100	53.0	52.0	61.2	60.2
Johnson	29	192,400	4,374	727,890	600,638	366,439	360,609	50.3	48.1	61.0	59.0

Name of County.	Number of Mortgages.	Total Consideration of Mortgages.	Number of Acres Mortgaged	Valuation by Owners.	Appraisement by Loan Companies.	1921	Assessed Valuation 1922	Per Cent Assessed Valuation to Owners' Valuation 1921	Per Cent Assessed Valuation to Owners' Valuation 1922	Per Cent Assessed Valuation to Loan Co's Appraisement. 1921	Per Cent Assessed Valuation to Loan Co's Appraisement. 1922
Kearney	3	$ 17,000	842	$ 56,800.	$ 45,700	$19,922	$ 19,457	35.1%	34.3%	43.6%	42.5%
Keith	12	70,100	4,264	298,500	208,600	88,898	72,475	30.4	30.9	38.8	34.7
Kimball	50	189,500	17,740	837,710	591,370	324,985	269,809	38.8	32.2	54.9	45.6
Lincoln.	09	34,700	3,120	146,400	115,115	38,880	30,015	26.5	20.5	33.9	26.1
Merrick.	22	176,000	4,286	670,900	545,845	270,238	278,550	40.4	41.5	49.1	51.0
Morrill	20	88,700	9,124	425,302	316,202	97,240	105,525	22.9	24.8	30.7	33.4
Nance	50	453,300	10,718	1,567,743	1,285, 953	691,774	683,865	44.2	43.6	53.9	53.1
Nemaha	14	99,500	1,822	349,100	281,034	158,571	158,721	45.4	45.5	56.4	56.6
Otoe	18	145,912	3,168	602,200	490,627	283,665	291, 600	47.1	48.4	57.8	59.4
Pawnee	11	84,940	1,880	273,000	243,620	132,380	132,965	48.1	48.7	54.3	54.6
Perkins.	17	60,750	3,530	208,850	199,100	79,814	78,152	38.3	37.0	40.1	38.3
Phelps.	5	27,700	1,040	115,000	96,400	50,555	50,385	43.9	43.7	52.4	52.2
Platte	61	462,600	9,703	1,879,003	1,545,154	934,290	925,291	49.8	49.2	60.5	59.9
Red Willow.	5	32,800	1,703	104,700	89,000	43,540	39,849	41.6	38.0	48.9	44.8
Richardson.	22	141,325	3,124	604,245	503,860	304,125	304,125	50.3	50.3	60.4	60.4
Saline	9	56,000	1,071	204,900	164,010	89,470	87,235	43.6	42.5	54.5	53.2
Sarpy	10	111,800	1,644	454,049	333,035	163,785	187,815	36.8	38.9	49.2	50.4
Saunders.	80	620,700	10,587	2,368,750	1,825,200	1,048,227	1,060,920	44.3	44.7	58.8	59.2
Scotts Bluff	6	25,500	1,834	96,150	77,850	34,222	33,015	35.6	34.3	43.9	42.4
Seward	20	121,200	2,560	555,775	479,700	206,986	210,035	37.3	37.8	43.2	43.8
Sherman	28	174,000	5,540	546,810	445,325	216,908	216,908	39.7	39.7	48.7	48.7
Thayer	46	300,000	7,113	1,038,855	893,445	471,940	463,915	45.4	44.6	52.8	51.9
Thomas	4	13,000	3,180	41,900	27,400	17,230	16,780	41.1	40.0	62.1	61.2
Thurston	131	563,300	9,928	1,889,890	1,606,095	886,161	873,665	46.9	46.3	55.2	54.5
Valley	25	162,000	6,574	536,774	431,972	212,745	212,745	39.6	39.6	49.3	49 3
Washington	21	182,750	2,897	711,165	607,423	378,892	360,378	53.3	50.0	62.3	59.3
Wayne	74	802,380	13,663	3,263,307	2,652,776	1,418,369	1,396,739	43.5	42.9	54.2	52.6
Webster	9	51,000	2,000	169,875	146,700	86,135	86,135	50.7	50.7	58.7	58.7
Wheeler	9	41,000	5,829	219,200	156,553	85,855	80,020	39.2	36.6	54.9	51.1
York.	36	275,600	8,874	1,028,585	808,191	492,855	485,422	46.9	47.1	59.7	60.0
TOTALS.	1,783	$13,282,664	369,541	$49,644,610	$40,523,743	$22,287,278	$21,664,378	44.9	43.7	55.9	53.5
Less mortgages filed March 31, 1920, to March 31st, 1921.	483	3,397,512	101,019	13,039,707	11,117,400	5,606,839	5,368,490	45.5	44.5	56.7	55.4
	1,300	9,885,152	268,522	36,604,903	29,406,343	16,680,439	16,295,888				

ness, farmers, bankers and business men, and in no other occupations.

The 138th affidavit correctly summarizes the information contained in the 137 affidavits as follows: The 137 affidavits were procured under the direct supervision of the affiant from 137 individuals of long residence in their respective counties, engaged in banking, real estate, abstracting or farming, in 54 counties in Nebraska, to-wit: Adams, Blaine, Box Butte, Buffalo, Cass, Chase, Cheyenne, Clay, Colfax, Custer, Dawson, Deuel, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Harlan, Hayes, Hamilton, Hitchcock, Hooker, Howard, Jefferson, Johnson, Kearney, Lincoln, Merrick, Morrill, Knox, Nemaha, Otoe, Pawnee, Perkins, Phelps, Platte, Red Willow, Richardson, Saline, Sarpy, Scotts Bluff, Sherman, Thayer, Thomas, Valley and Webster; that the average assessed value of lands in these counties for 1922 compared with the fair,
171 cash, market value testified to by the 137 affiants is 61.9%.

Twenty-seven of the affiants residing in 14 different counties testify that the percentage of the assessed valuation of their own real estate in those counties to the fair, cash value, as of April 1, 1922, is 61.8%.

SUMMARY OF C., B. & Q. EXHIBIT 6.

The plaintiff offered and there was received and read in evidence, without objection, C., B. & Q. Exhibit "6", being the affidavit of Clifford C. Sadler who testified that with assistance of others under his direct supervistion he had checked the sales and transfers of real estate in the City of Omaha, as revealed by the records from April 1, 1921, to April 1, 1922. Attached to his affidavit and a part thereof is a detailed statement giving the grantor and grantee, with a description of every transfer, 5617 in number, for which an actual bona-fide consideration is shown, excluding those transfers by way of gift or reciting a nominal consideration only. The affiant also checked the 1922 tax assessments against each of the tracts of land thus transferred. The correct summary of this information is:

Number of transfers	5,671
Total consideration for all transfers	$21,160,679
Total assessed valuation of the 5671 transfers for 1922	$13,525,298

The percentage of the 1922 valuation for tax assessment of the 5671 tracts of land thus transferred to the consideration recited in the record for the transactions is 63.9%.

172 SUMMARY OF C., B. & Q. EXHIBIT 7.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "7", being the affidavit of Verne Hedge, an abstracter engaged in the City of Lincoln, Nebraska

for 19 years last past in the abstracting business. This affiant testified that he, with others under his direct supervision, checked all the sales and transfers of real estate in the City of Lincoln, Lancaster County, Nebraska, during the month of March, 1922. Attached to the affidavit and a part of it is a tabulated statement showing the grantor and grantee, with a description of the property thus transferred, including only those showing an actual bona fide consideration, and excluding nominal considerations or those by way of gift. This affidavit reveals the following information:—

Total transfers	225
Consideration for all of these transfers	$648,837
Valuation of all of the 225 tracts of land thus transferred for taxation in 1922	$391,493

Percentage of the assessed valuation of the 225 tracts of land thus transferred to the actual consideration shown of record being 60.3%.

SUMMARY OF C., B. & Q. EXHIBIT 9.

The plaintiff offered and there was received and read in evidence, without objection, the affidavit of Pollock Parmelee, identified as C. B. & Q. Exhibit "9", as follows: Affiant compared the average value of lands per acre in all counties in Nebraska in 1920
173 as reported by the United States Bureau of Census and the average assessed valuation of lands per acre as reported by the State Tax Commissioner in 1922. The average value of farm lands per acre January 1, 1920, according to the United States Census is $87.91. The average assessed valuation per acre of these lands as equalized by the State Board of Equalization, in 1922, is $37.07, showing that said assessed valuation per acre is but 42.17% of the average value per acre of these lands January 1, 1920 fixed by the United States Census. The average value of farm lands for the 71 counties in Nebraska crossed by plaintiff's lines of railway, according to the United States Census as of January 1, 1920, is $98.54. The average assessed valuation per acre of these lands as equalized by the State Board of Equalization, for 1922, is $42.78, so that the assessed valuation for 1922 is but 43.41% of the average value fixed by the United States Census for January 1, 1920.

SUMMARY OF C., B. & Q. EXHIBIT 12.

Plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "12", a bulletin issued by the Department of Agriculture of the State of Nebraska March 1, 1922 containing agricultural statistics for that state and of the United States, which, amongst other things, reveals that the farm lands in Nebraska with improvements March 1, 1922 average $85 per acre as compared to the 1920 Census valuation of $87.91 per acre;
174 that the value of unimproved land March 1, 1922 is $76 per acre as compared to the Census valuation 1920 of $78.87 per acre.

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Statement of A. E. Anderson, showing corn values in Nebraska, 1916-1922 inc.

7	Chase	25	19	29	22	37	22	45	35		75	70		72	55		48	39
	Dundy	21	15	27	20	25	24	32	29		47	38		36	26		44	31
	Frontier	24	16	33	24	42	26	31	27		52	46		43	33		41	33
	Hayes	14	11	20	15	23	15	30	20		38	23		50	40		53	45
	Hitchcock	20	14	25	19	35	27	50	28		68	51		70	51		50	37
	Keith	32	26	40	30	50	31	39	29		84	62		65	47		56	41
	Lincoln	39	26	35	25	42	36	54	47		80	84		86	61		46	37
	Perkins	25	17	26	16	333	25	45	33		69	47		67	48		52	37
	Red Willow	26	20	33	20	30	22	43	30		62	52		60	46		57	31
										12.5	64	50	12	60	45	12.5	48	36
											800	625		720	540		600	450
8	Adams	100	91	102	93	105	92	109	99		133	116		123	100		111	93
	Franklin	61	42	64	48	70	59	59	46		68	60		85	59		74	62
	Furnas	37	27	36	32	50	59	48	39		60	47		64	49		63	50
	Gosper	41	28	56	43	62	57	68	67		50	38		80	46		80	63
	Harlan	48	38	50	41	53	45	64	50		79	55		76	61		73	65
	Kearney	88	65	90	78	95	78	95	85					100	90		108	100
	Phelps	69	64	73	50	82	70	90	65		115	93		88	75		89	75
	Webster	65	52	75	65	81	63	79	69		110	94		104	81		95	80
										6	90	70	6	87	69	6	88	76
											540	420		522	414		528	456
9	Clay	106	101	114	103	122	103	129	113		165	143		150	131		133	104
	Fillmore	107	95	115	97	122	100	150	132		183	143		140	113		130	117
	Gage	99	81	107	92	124	108	140	113		213	178		180	155		118	101
	Jefferson	85	75	89	73	96	79	113	83		154	141		150	140		119	87
	Johnson	106	82	98	83	143	98	147	123		175	155		168	140		122	100
	Nemaha	115	109	123	112	129	110	183	165		225	200		183	150		195	146
	Nuckolls	89	74	89	72	103	81	162	155		127	103		150	121		121	98
	Otoe	141	122	178	141	174	59	194	161		283	242		187	142		171	147
	Pawnee	98	74	102	83	117	95	125	100		180	134		150	117		137	114
	Richardson	144	114	124	115	155	135	197	155		225	200		250	225		165	140
	Saline	117	99	141	103	135	118	139	105		196	192		150	141		153	130
	Thayer	92	82	100	82	110	94	115	98		155	131		136	115		115	92
										9	182	153	9	160	135	9	136	113
											1638	1377		1440	1215		1224	1017
	State	75	60	77	63	104	85	90	75		114	99		110	85		85	76

SUMMARY OF C., B. & Q. EXHIBIT 13.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "13", being the affidavit of A. E. Anderson, who, amongst other things, testified that during eight years last past he has been and yet is Federal Agricultural statistician for the State of Nebraska; in that capacity he receives under his supervision and direction from a list of over one thousand correspondents throughout the State of Nebraska information as to the value of lands and the improvements thereon in Nebraska; that from this information he prepared a statement as to each county in Nebraska showing the average value per acre of lands therein from 1916 to 1922, both inclusive. The statement is attached to and made a part of the affidavit. Affiant computed the average value of land in the state, without improvements, in 1922, and it is the sum of $76 per acre, and the average value per acre of lands and improvements in Nebraska, on March 1st, 1922, was $85.

The material parts of the statement are as follows:

(Here follows statement, marked side folios 175 and 175½.)

176 C. B. & Q. EXHIBIT 16.

The plaintiff offered and there was read in evidence, without objection, C. B. & Q. Exhibit "16", being the affidavit of Madge Dessert, as follows:

"I have checked assessment for 1916 as made by State Board of Equalization and Assessment for 1916 as published in Biennial report of Auditor of Public Accounts for Nebraska in December 1916, have figured said assessment to show full average assessed value per acre instead of one-fifth; that I have checked 1920, 1921 and 1922 average assessed value per acre in each county as published in Report of the Nebraska State Board of Equalization and Assessment for 1922; that figures showing average value per acre for each county for years mentioned above with average assessed value per acre for entire state are correctly shown in statement hereto attached and made a part of this affidavit."

"COMPARATIVE STATEMENT OF AVERAGE ASSESSED VALUES PER ACRE OF FARM LANDS AND IMPROVEMENTS IN NEBRASKA, 1916 TO 1922, INCLUSIVE.

County.	1916.	1920.	1921.	1922.
Adams	$56.10	84.48	72.12	71.83
Antelope	34.80	60.34	50.09	48.78
Arthur	3.30	5.13	4.35	4.23
Banner	5.80	9.48	7.30	7.06
Blaine	4.60	5.48	4.66	4.65
Boone	43.65	82.90	70.60	71.10

County.	1916.	1920.	1921.	1922.
Box Butte	6.35	10.26	8.78	9.03
Boyd	31.75	51.54	43.22	43.32
Brown	7.35	10.50	8.92	8.40
Buffalo	33.25	55.15	46.11	46.14
Burt	79.75	142.14	120.30	117.47
Butler	76.10	126.34	97.13	96.69
Cass	80.50	132.49	111.32	111.46
Cedar	60.60	114.75	97.00	94.18
Chase	6.70	14.40	12.20	12.27
Cherry	4.10	6.26	4.93	5.20
177 Cheyenne	10.50	26.27	22.30	22.86
Clay	69.45	91.25	77.69	77.74
Colfax	79.15	132.45	111.82	112.77
Cuming	82.20	143.01	123.60	120.33
Custer	15.35	24.49	20.49	20.45
Dakota	60.65	112.92	96.86	96.51
Dawes	5.85	12.08	10.31	10.45
Dawson	30.90	48.57	41.14	40.18
Deuel	9.50	30.72	26.16	25.06
Dixon	55.65	99.00	82.10	80.27
Dodge	81.30	140.32	119.36	118.73
Douglas	97.55	123.85	144.65	144.61
Dundy	5.70	12.32	10.47	10.47
Fillmore	66.50	99.51	85.26	85.31
Franklin	34.20	46.53	38.84	38.39
Frontier	15.85	19.98	17.04	16.69
Furnas	24.85	34.56	29.72	29.63
Gage	69.00	91.35	79.91	80.19
Garden	3.80	11.49	9.81	9.22
Garfield	8.10	15.91	13.23	12.10
Gosper	22.50	33.82	28.63	28.86
Grant	3.50	4.34	3.60	3.82
Greeley	38.80	48.82	42.29	38.44
Hall	54.35	71.69	61.55	61.38
Hamilton	78.70	101.25	86.68	86.73
Harlan	25.90	38.03	32.00	33.06
Hayes	6.60	14.82	12.87	12.55
Hitchcock	8.20	21.23	18.22	18.48
Holt	11.20	18.63	16.24	15.32
Hooker	3.50	6.79	3.99	3.70
Howard	40.10	53.62	45.71	45.58
Jefferson	61.30	81.33	69.67	70.11
Johnson	66.20	95.60	85.97	85.55
Kearney	44.65	60.36	50.93	50.47
Keith	7.15	16.61	13.48	12.53
Keyapaha	6.80	12.65	10.38	9.58
Kimball	6.30	21.11	17.37	17.88
Knox	36.15	62.63	53.25	50.65
Lancaster	77.10	115.69	100.40	101.22
Lincoln	8.50	15.70	10.07	10.09

County.	1916.	1920.	1921.	1922.
Logan	5.85	9.82	8.45	8.24
Loup	6.00	9.17	7.73	6.62
Madison	53.00	102.54	86.72	86.23
McPherson	3.05	6.79	5.82	3.52
Merrick	51.20	73.64	61.70	61.40
Morrill	7.00	11.68	9.90	10.10
Nance	49.80	79.64	64.63	65.15
Nemaha	75.15	119.07	95.38	94.88
Nuckolls	51.50	68.03	58.62	59.52
Otoe	82.40	124.40	105.58	104.09
Pawnee	65.50	68.96	69.21	69.23
Perkins	8.85	21.64	16.25	15.23
Phelps	36.50	59.32	49.42	49.45
Pierce	51.00	90.42	76.78	72.30
Platte	72.80	116.98	99.20	98.45
Polk	78.55	113.61	96.99	97.41
Red Willow	16.75	25.20	21.29	21.37
178 Richardson	68.30	106.34	92.11	91.95
Rock	7.50	10.68	9.05	8.22
Saline	75.90	109.81	93.41	93.57
Sarpy	80.00	123.85	102.71	104.44
Saunders	78.65	128.59	104.26	104.07
Scotts Bluff	24.85	44.00	37.69	35.55
Seward	76.85	110.66	94.17	94.30
Sheridan	5.50	8.63	7.34	7.15
Sherman	30.60	41.46	35.58	35.13
Sioux	3.70	8.71	6.91	6.4*a*
Stanton	66.20	115.90	98.16	92.84
Thayer	56.50	72.43	62.00	62.57
Thomas	3.45	5.70	4.72	3.27
Thurston	77.10	134.81	34.46	91.52
Valley	32.60	47.65	39.51	38.94
Washington	83.80	148.00	125.86	123.83
Wayne	73.15	133.78	.....	105.85
Webster	46.95	52.83	44.85	44.65
Wheeler	8.30	15.37	13.20	12.10
York	80.30	108.27	92.71	92.17
State Average	31.25	47.07	39.47	37.07

Increase 1922 over 1916—$5.82 per acre or 18%.

179 SUMMARY OF C., B. & Q. EXHIBIT 17.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "17," being an affidavit of E. A. Roth, for 38 years last past a resident and owner of real estate in Phelps County, Nebraska, where for 30 years last past he has been engaged in the real estate business; that he is well acquainted and informed as to values of lands and has personally investigated the

lands transferred by warranty deed in Phelps County during the period from April 1, 1921 to March 31, 1922 so as to acquaint himself with actual sale prices, location and market value of the lands that in his opinion, arrived at from an actual observation and knowledge of these lands, the market value thereof on March 31, 1922 was on the average 100% of the value evidenced by the deeds therefor, and in affiant's opinion the average market value of lands with improvements, in Phelps County, Nebraska March 31, 1922 was over $76.10 per acre; that affiant checked the valuations of the lands with the assessed value of these lands in the years 1920, 1921 and 1922. The attached recapitulation is made a part of the affidavit, and is as follows:

"Phelps County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds

Number of transfers	44
" " Acres transferred	6,880
Consideration shown by deeds	$523,608.00

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Assessed value same land 1920 (1/5)	$59,396.00
" " " " 1921	$286,315.00
" " " " 1922	$275,330.00
Per Cent of 1920 assessment to sale value	66%
Per Cent of 1921 " " " "	54%
" " " 1922 " " " "	52%
Average sale price per acre	$76.10
Average Assessed value per acre 1920 1/5	$10.08
" " " " " 1921	$41.61
" " " " " 1922	$40.00

SUMMARY OF C., B. & Q. EXHIBIT 18.

The plaintiff offered and there was received and read in evidence C. B. & Q. Exhibit "18," the affidavit of A. R. Morrison, for 57 years last past resident and owner of real estate in Sarpy County Nebraska. This affidavit gives the same information as the affidavit of Roth last preceding but is confined to Sarpy County. Affiant fixes the average market value of lands with improvements in Sarpy County March 31, 1922 at $188 per acre. Recapitulation of the tabulations attached to this affidavit and made a part of same as follows:

"Sarpy County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	33
Number of acres transferred	3,738
Consideration shown by deeds	$702,765.00
Assessed value same land 1920	$73,220.00
" " " " 1921	$320,662.00
" " " " 1922	$348,771.00
Per cent 1920 assessment to sale value	52%
" " 1921 " " " "	45%
" " 1922 " " " "	49%
Average sale price per acre	$188.00
Average assessed price 1920 per acre	$19.62
" " " 1921 " "	$85.78
" " " 1922 " "	$93.30"

SUMMARY OF C., B. & Q. EXHIBIT 19.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "19" being the affidavit of Jacob Hatchr, for forty years last past a resident and owner of real estate in Red Willow County, Nebraska. The substance of the affidavit is the same as of the affidavit of Roth, but is confined to real estate in Red Willow County, Nebraska. Affiant fixes the average market value of lands, with improvements, in that County at $45.20 per acre March 21, 1922. A correct recapitulation of the tabulated statement is appended to the affidavit and is as follows:

"Red Willow County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	65
Number of acres sold	12,666
Consideration as shown by deeds	$572,520.00
Assessed value same land 1920	$63,422.00
" " " " 1921	$282,027.00
" " " " 1922	$256,886.00
Per cent of 1920 assessment to sale value	55%
" " " 1921 " " " "	49%
" " " 1922 " " " "	45%
Average sale price per acre	$45.20
Average assessed value 1920 per acre	$5.00
" " " 1921 " "	$22.77
" " " 1922 " "	$20.28

Summary of C., B. & Q. Exhibit 20.

The plaintiff offered and there was received in evidence, without objection, C. B. & Q. Exhibit "20," the affidavit of J. P. Falter, a resident for 38 years last past and owner of real estate in Cass County, Nebraska, where he has been engaged in the real estate business for 20 years last past. Affiant testifies that the average market value of lands, with improvements, in Cass County, Nebraska, March 31, 1922 was $175 per acre and in all other respects the affidavit is identical with the affidavit of Roth, C. B. & Q. Exhibit "17." A correct summary of the information secured by affiant Falter with respect to the matters testified to in his affidavit is as follows:

183 "Cass County, Nebraska.

Recapitulation of Abstracts of Warranty Deeds Filed During Period of April 1, 1921, to April 1, 1922, and the Assessment for the Years 1920, 1921, and 1922 of the Lands Transferred by Those Deeds.

Number of transfers	39
Number of acres sold	4,120
Consideration as shown by deeds	$748,350.00
Assessed value same lands 1920	$99,794.00
" " " " 1921	$409,250.00
" " " " 1922	$411,430.00
Per Cent of 1920 assessment to sale value	66%
" " " 1921 " " " "	54%
" " " 1922 " " " "	54%
Average sale price per acre	$181.63
Average assessed price per acre 1920	$24.22
" " " " " 1921	$99.33
" " " " " 1922	$99.86

Summary of C. B. & Q. Exhibit 21.

The plaintiff then offered in evidence C. B. & Q. Exhibit "21" consisting of 20 affidavits, which were received and read without objection. The affidavit of Pollock Parmele is a summary of the facts testified to by the remaining 19 affiants, all of whom were the owners of real estate in Cass County, Nebraska, acquired prior to January 1, 1922, and all of them testify to the actual consideration paid and the actual fair value of that land April 1, 1922.

184 The correct summary of that information is testified to by the affiant Parmele as follows: "I, Pollock Parmele, do state on oath that I checked transfers by warranty deed recorded in Cass County, Nebraska, during period April 1st, 1921, to April 1st, 1922, showing parties, consideration, acres, description, and assessed value; that correct statement showing such information as well as comparative recapitulation thereof showing average sale price per acre of $181.63 and average assessed value in 1922 of $99.86 per acre is attached and made a part of this affidavit; that grantees in most instances, and grantors in cases where grantee could not be found, have been interviewed by myself or by others at my direction and

affidavits secured from parties to 19 of such transfers; that it was impossible to locate some of the parties to transfers and the others refused to make any affidavit stating as reason that it might affect their tax assessment; that of those secured the total consideration 2,081 acres shown was $374,020.00 and the fair cash market value as of April 1st, 1922, was $371,825.00 as sworn to in affidavits attached, which actual market value is 99.4% of sale consideration, or an average value of $178.67 per acre; that diagram showing location of lands covered by affidavits is hereto attached.

Further, that similar affidavits have been secured from 16 grantees of land sold during same period in four counties of Gage, Nemaha, Richardson and Johnson for comparison, which affidavits
185 show fair cash market value as of April 1st, 1922, to be 100% of or the same as sale consideration of record. Affidavits hereto attached."

C., B. & Q. Exhibit 25.

The plaintiff offered and there was received and read in evidence C. B. & Q. Exhibit "25," being the affidavit of R. D. Pollard, as follows:

"R. D. Pollard being first duly sworn deposes and says that he has given other affidavits in these proceedings.

Affiant furthers says that on Pages 160 and 161 of the Report of the State Tax Commissioner of Nebraska for the years 1921-1922 the total amount of intangible property, which does not include corporate franchises, returned for taxation and valued in 1922 at 25 per cent of its actual value is but $35,316,423.00. One hundred per cent value of this property, therefore, is $141,265,692.00.

Affiant further says that the Bankers Directory of the United States of America for July, 1922, Pages 985 to 1040, inclusive, reveals the deposits at that time in the banks in the State of Nebraska and that the aggregate sum of those deposits in that month is $432,720,390.00, so that the percentage of value of the intangible property listed for taxation in the State of Nebraska for 1922, which includes not only bank deposits but promissory notes and choses in action, was but 32.7 per cent of the actual value of the bank deposits in the State during that year.

Affiant further says that it appears on Pages 6 and 7 of the Agricultural Bulletin of the United States Census of 1920 that in the State of Nebraska animals of all species on the farms in the
186 State of Nebraska were of the value of $326,002,105.

Affiant further says that as appears on Pages 120, 132 and 133 of the Report of the State Tax Commissioner for the State of Nebraska for 1921-1922 all animals in the State of Nebraska were valued for taxation in 1922 at but $146,562,301 or but 44.95 per cent of the census value of animals on farms solely in said State in 1920."

187 Summary of Plaintiff's Joint Exhibit 2.

From the evidence adduced at this hearing by the Chicago & Northwestern Railway Company, the plaintiff Chicago, Burlington

& Quincy Railroad Company adduced and there was read in evidence, without objection, plaintiff's joint Exhibit 2, the affidavit of T. A. Polleys, which, amongst other things, shows that he is Tax Commissioner of the Chicago & Northwestern Railway Company since 1903 continuously, and also Tax Commissioner of the Chicago, St. Paul, Minneapolis & Omaha Railway Company; in that capacity for nearly 20 years last past have made a thorough study of land values in Iowa, Nebraska, South Dakota and Wisconsin during the past 7 years; research based in large part upon the so-called assessment ratio method for many years employed by the Tax Commissions of Wisconsin and Minnesota to ascertain the approximate true value of real estate; this ratio method has been used by the State Board of Equalization and Assessment for Nebraska at times in the equalization of real estate assessments, particularly with respect to real estate equalization made in 1920. In studies in the State of Nebraska affiant personally gathered from the public records many thousand transfers of Nebraska real estate and posted against each the assessed value of the real estate under the assessment last preceding the date of transfer. Have examined and studied a still larger number of Nebraska real estate transfers and assessments gathered by other representatives of the Tax Departments of the two railroads above mentioned and under the personal direction and supervision of affiant. The Nebraska studies concerned both real and urban real estate and affiant verily believes he is well advised as to the true value of Nebraska real estate in those counties crossed by the lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & Northwestern Railway Company, for the year 1922, and continuously for a considerable number of years prior thereto; that there is a close correspondence and agreement between the stated consideration in recorded deeds of Nebraska acre property and the considerations indicated by the revenue stamps affixed to said deeds and the prior incumbrances recited therein. Attached to this affidavit are three summarized exhibits, A, B and C. Affiant states that the land sales therein referred to are widely distributed throughout the respective counties and generally speaking fairly represent all general localities and all qualities of soil and variations in value; that on the whole the average intrinsic quality of the lands therein referred to is somewhat below the average intrinsic quality of the entire body of lands in the group of 37 counties considered as a unit; that it appears therefrom that nearly 500,000 acres of land sold during the calendar year 1921 were assessed at only $46.51 per acre in 1922, whereas the entire body of assessable lands in those 37 counties considered as a group was assessed at an average of $49.23 per acre in the calendar year 1922. Over 30,000 old were assessed at only $44.50 per acre in 1922, whereas the entire body of lands in the 37 counties considered as a group were assessed at $49.23.

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These Exhibits A, B and C are as follows:

(Here follow exhibits marked side folio pages 189, 190, and 191.)

Exhibit A to Polley's Affidavit

RECAPITULATION OF LAND SALES from January 1, 1921 to November 192
crossed by the C. & N. W. and C. St.

County.	Transfers.	Acres Sold.	Consideration		
			Total.	Per Acre.	
1.	2.	3.	4.	5.	
Adams	76	11,060	1,181,590	106.83	
Antelope	167	27,963	2,389,613	85.43	1
Boone	117	21,128	2,830,496	133.97	1
Boyd	126	24,696	1,561,879	63.24	
Brown	136	56,513	909,859	16.10	
Burt	88	14,269	2,673,027	187.33	1
Butler	83	10,361	1,771,360	170.96	
Cedar	120	18,398	2,682,565	145.81	1
Cherry	202	101,900	1,091,081	10.71	
Clay	103	14,023	1,774,015	126.51	1
Colfax	59	6,725	1,344,596	199.94	
Cuming	92	10,744	1,937,519	180.33	1
Dakota	36	4,843	719,082	148.48	
Dawes	46	17,046	457,100	26.82	
Dixon	88	13,871	1,859,380	134.05	
Dodge	70	6,968	1,618,120	232.22	
Douglas	69	4,752	1,291,002	271.68	
Fillmore	114	15,727	1,985,782	126.27	1,
Hamilton	101	10,477	1,537,375	146.74	
Holt	288	86,105	3,391,151	39.38	1,
Knox	168	24,657	2,245,795	91.08	1,
Lancaster	173	20,808	3,476,322	167.07	2,
Madison	112	15,934	2,536,245	159.17	1,
Nuckolls	99	14,393	1,574,934	109.42	
Pierce	97	13,923	1,763,123	126.66	
Platte	108	13,378	2,160,310	161.48	1,
Rock	74	39,623	645,558	16.29	
Saunders	118	14,646	2,723,594	185.96	1,
Seward	113	14,040	2,170,783	154.61	1,
Sheridan	104	37,049	870,803	23.50	
Sioux	83	31,810	679,353	21.36	
Stanton	103	17,500	2,570,572	146.89	1,
Thayer	159	22,436	2,470,830	110.13	1,
Thurston	157	11,479	1,488,516	129.67	
Washington	63	6,084	1,099,684	180.75	
Wayne	68	10,266	3,000,331	194.82	1,
York	151	16,852	2,714,749	161.09	2,
37 Counties	4,131	802,347	68,198,694	85.00	36,

t A & Polley Affidavit

A.

OF LAND SALES from January 1, 1921 to November 1922, and the 1922 equalized assessment against same, in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

Transfers.	Acres Sold.	Consideration Total.	Consideration Per Acre.	1922 Equalized Assessment Total.	1922 Equalized Assessment Per Acre.	Ratio.	1922 Av'g. Equal. Ass'mt. per Acre, Entire County	Est'd. True Value per Acre, Entire County.
2.	3.	4.	5.	6.	7.	8.	9.	10.
		$		$	$	%	$	$
76	11,060	1,181,590	106.83	748,840	67.70	63.37%	71.83	113.35
167	27,963	2,389,613	85.43	1,285,506	45.97	53.81%	48.78	90.65
117	21,128	2,830,496	133.97	1,456,855	68.95	51.46%	71.10	138.17
126	24,696	1,561,879	63.24	944,508	38.25	60.48%	43.32	71.63
136	56,513	909,859	16.10	422,630	7.47	46.45%	8.40	18.08
88	14,269	2,673,027	187.33	1,459,894	102.31	54.62%	117.47	215.07
83	10,361	1,771,360	170.96	875,838	84.53	49.45%	96.69	195.53
120	18,398	2,682,565	145.81	1,646,652	89.50	61.38%	94.18	153.44
202	101,800	1,091,081	10.71	469,819	4.61	43.04%	4.93	11.46
103	14,023	1,774,015	126.51	1,010,975	72.09	56.98%	77.74	136.44
59	6,725	1,344,596	199.94	771,245	114.68	57.35%	112.77	196.64
92	10,744	1,937,519	180.33	1,260,705	117.34	65.07%	120.33	184.92
36	4,843	719,082	148.48	407,370	84.12	56.65%	96.51	170.37
46	17,046	457,100	26.82	193,410	11.35	41.95%	10.31	24.58
88	13,871	1,859,380	134.05	981,850	70.78	52.80%	80.27	152.03
70	6,968	1,618,120	232.22	797,310	114.42	49.27%	118.73	240.98
69	4,752	1,291,002	271.68	686,337	144.43	53.16%	144.64	272.08
114	15,727	1,985,782	126.27	1,270,280	80.77	63.97%	85.31	133.36
101	10,477	1,537,375	146.74	842,576	80.42	54.81%	86.73	158.24
288	86,105	3,391,151	39.38	1,401,585	16.28	41.34%	15.32	37.06
168	24,657	2,245,795	91.08	1,235,148	49.22	54.04%	50.65	93.73
173	20,808	3,476,322	167.07	2,070,675	99.51	59.56%	101.22	169.95
112	15,934	2,536,245	159.17	1,264,408	79.35	49.85%	86.23	172.98
99	14,393	1,574,934	109.42	802,055	55.73	50.93%	59.52	116.87
97	13,923	1,763,123	126.66	863,270	62.00	48.94%	70.75	144.56
108	13,378	2,160,310	161.48	1,208,757	90.35	55.95%	98.45	175.96
74	39,623	645,558	16.29	248,235	6.26	38.43%	8.22	21.39
118	14,646	2,723,594	185.96	1,427,342	97.46	52.41%	104.07	198.57
113	14,040	2,170,783	154.61	1,133,753	80.75	52.23%	94.30	180.55
104	37,049	870,803	23.50	337,069	9.10	38.72%	7.15	18.47
83	31,810	679,353	21.36	319,542	10.05	47.05%	6.42	13.65
103	17,500	2,570,572	146.89	1,492,365	85.28	58.06%	92.84	159.90
159	22,436	2,470,830	110.13	1,227,425	54.71	49.66%	62.57	126.00
157	11,479	1,488,516	129.67	905,900	79.01	60.93%	91.52	150.21
63	6,064	1,099,684	180.75	611,576	100.52	55.61%	123.83	222.68
68	10,266	2,000,331	194.82	1,063,666	103.74	53.19%	105.85	199.02
151	16,852	2,714,749	161.09	1,543,372	91.57	57.09%	92.17	161.45
4,131	802,347	68,198,694	85.00	36,696,673	45.74	53.82%	49.23	91.48

Compiled by Tax Department of C&NWRyCo., Chicago, Ill. November 20, 1922. #969.

Exhibit B to Polley's Affidavit

B.

RECAPITULATION OF LAND SALES from January to December 1921 inclusive, and the 1922 equalized assessment against same in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

County.	Transfers.	Acres Sold.	Consideration Total.	Consideration Per Acre.	1922 Equalized Assessment Total.	1922 Equalized Assessment Per Acre.	Ratio.	1922 Av'g. Equal. Ass'mt. per Acre, Entire County	Est'd. True Value per Acre, Entire County.
1.	2.	3.	$ 4.	$ 5.	$ 6.	$ 7.	8.	$ 9.	$ 10.
Adams	48	6,622	727,165	109.81	426,711	64.44	58.69%	71.83	122.39
Antelope	113	19,592	1,684,965	86.24	898,366	45.85	53.17%	48.78	91.74
Boone	76	12,957	1,894,867	146.24	875,955	67.60	46.26%	71.10	153.70
Boyd	76	14,820	1,004,794	67.79	574,505	38.79	57.22%	43.32	75.71
Brown	81	30,055	503,649	16.76	236,730	7.88	47.00%	8.40	17.87
Burt	59	9,958	1,900,326	190.83	966,604	97.07	50.87%	117.47	230.93
Butler	52	7,366	1,387,736	188.40	653,793	88.76	47.12%	96.69	205.20
Cedar	61	11,594	1,810,339	156.14	1,029,870	88.83	56.88%	94.18	165.58
Cherry	134	70,557	800,989	11.35	312,612	4.43	39.04%	4.93	12.63
Clay	68	9,533	1,238,233	129.89	679,995	71.33	54.92%	77.74	141.55
Colfax	37	4,055	962,796	237.43	495,480	122.19	51.46%	112.77	219.15
Cuming	52	5,559	1,101,623	198.17	662,150	119.11	60.10%	120.33	200.22
Dakota	23	3,273	533,135	162.89	273,275	83.49	51.26%	96.51	188.28
Dawes	26	8,447	210,610	24.93	78,190	9.26	37.15%	10.31	27.76
Dixon	46	7,159	980,578	137.14	495,100	69.24	50.49%	80.27	158.98
Dodge	52	5,429	1,323,270	243.74	620,180	114.23	46.87%	118.13	253.32
Douglas	40	3,164	883,474	279.23	444,090	140.36	50.27%	144.64	287.73
Fillmore	67	9,498	1,298,196	136.68	769,440	81.01	59.27%	85.31	143.94
Hamilton	51	5,107	810,680	158.74	415,410	81.34	51.24%	86.13	169.27
Holt	189	47,845	2,144,387	44.82	767,170	16.03	35.76%	15.32	42.84
Knox	94	14,198	1,323,156	93.19	690,542	48.64	52.19%	50.65	97.05
Lancaster	116	14,470	2,507,147	173.26	1,473,200	101.81	58.76%	101.22	172.26
Madison	72	10,709	1,860,777	173.76	871,631	81.39	46.84%	86.23	184.10
Nuckolls	59	8,691	959,510	110.40	467,780	53.82	48.75%	59.52	122.10
Pierce	53	7,507	1,094,268	145.77	471,215	62.77	43.06%	70.75	164.31
Platte	52	6,691	1,128,712	168.69	574,125	85.81	50.87%	98.45	193.54
Rock	42	16,543	355,698	21.50	121,810	7.36	34.23%	8.22	24.01
Saunders	67	9,015	1,772,268	196.59	865,740	96.03	48.85%	104.07	213.04
Seward	68	9,210	1,541,800	167.40	766,088	83.18	49.69%	94.30	189.78
Sheridan	66	24,674	575,569	23.33	224,129	9.08	38.93%	7.15	18.37
Sioux	53	23,313	504,184	21.63	239,659	10.28	47.53%	6.42	13.51
Stanton	63	10,779	1,708,212	158.48	968,085	89.81	56.31%	92.84	164.87
Thayer	116	15,733	1,845,520	117.30	886,625	56.35	48.04%	62.57	130.25
Thurston	100	7,817	1,043,587	133.50	587,800	75.20	56.32%	91.52	162.50
Washington	50	4,719	868,435	184.03	468,264	99.23	53.92%	123.83	229.66
Wayne	38	5,195	1,135,824	218.64	509,522	98.08	44.86%	105.85	235.96
York	105	11,947	2,029,097	169.84	1,103,712	92.38	54.39%	92.17	169.46
37 Counties	2,575	493,792	45,455,376	92.05	22,965,953	46.51	50.53%	49.23	97.46

Compiled by Tax Department of C. & N. W. Ry., Co., Chicago, Illinois. - November 20, 1922.

#970.

Eplebt C + Polleys Affidavit

C

RECAPITULATION OF LAND SALES from January to November 1922, and the 1922 equalized assessment against same in 37 Nebraska counties crossed by the C. & N. W. and C. St. P. M. & O. Railways.

County.	Transfers.	Acres Sold.	Consideration		1922 Equalized Assessment		Ratio.	1922 Av'g. Equal. Ass'mt. per Acre. Entire County.	Est'd. True Value per Acre, Entire County.
			Total.	Per Acre.	Total.	Per Acre.			
1.	2.	3.	$ 4.	$ 5.	$ 6.	$ 7.	8.	$ 9.	$ 10.
Adams	28	4,438	454,425	102.39	322,129	72.58	70.89%	71.83	101.33
Antelope	54	8,371	704,648	84.18	387,140	46.25	54.94%	48.78	88.79
Boone	41	8,171	935,629	114.51	580,900	71.09	62.08%	71.10	114.53
Boyd	50	9,876	557,285	56.43	369,603	37.42	66.31%	43.32	65.33
Brown	55	26,458	406,210	15.35	185,900	7.03	45.76%	8.40	18.36
Burt	29	4,311	772,701	179.24	493,290	114.43	63.85%	117.47	183.98
Butler	21	2,995	383,624	128.09	222,045	74.14	57.88%	96.69	167.05
Cedar	59	6,804	872,226	128.19	616,782	90.65	70.72%	94.18	133.18
Cherry	68	31,243	290,092	9.29	157,207	5.03	54.15%	4.93	9.11
Clay	35	4,496	535,782	119.33	330,980	73.72	61.78%	77.74	125.83
Colfax	22	2,670	381,800	143.00	275,765	103.28	72.23%	112.77	156.13
Cuming	40	5,185	835,896	161.21	598,555	115.44	71.61%	120.33	168.04
Dakota	13	1,570	185,947	118.44	134,095	85.41	72.12%	96.51	133.82
Dawes	20	8,599	246,490	28.67	115,220	13.40	46.74%	10.31	22.06
Dixon	42	6,721	878,802	130.75	486,750	72.42	55.39%	80.27	144.92
Dodge	18	1,539	294,850	191.59	177,130	115.09	60.08%	118.73	197.62
Douglas	29	1,588	407,528	256.63	242,247	152.55	59.44%	144.64	243.34
Fillmore	47	6,229	687,586	110.39	500,840	80.40	72.83%	85.31	117.14
Hamilton	50	5,370	726,695	135.32	427,166	79.55	58.79%	86.73	147.53
Holt	99	38,260	1,246,764	32.59	634,415	16.58	50.87%	15.32	30.12
Knox	74	10,459	922,639	88.21	544,506	52.07	59.03%	50.65	85.80
Lancaster	57	6,338	969,175	152.92	597,475	94.27	61.65%	101.22	164.18
Madison	40	5,225	675,468	129.28	392,777	75.17	58.15%	86.23	148.30
Nuckolls	40	5,702	615,424	107.93	334,275	58.62	54.32%	59.52	109.58
Pierce	44	6,416	669,455	104.34	392,055	61.11	58.57%	70.75	120.80
Platte	56	6,687	1,031,598	154.27	634,632	94.90	61.52%	98.45	160.03
Rock	32	23,080	289,860	12.56	126,425	5.48	43.63%	8.22	18.84
Saunders	51	5,631	951,326	168.94	561,602	99.73	59.03%	104.07	176.31
Seward	45	4,830	628,983	130.22	367,665	76.12	58.46%	94.30	161.31
Sheridan	38	12,375	295,234	23.86	112,940	9.13	38.27%	7.15	18.64
Sioux	30	8,497	175,169	20.62	79,883	9.40	45.60%	6.42	14.08
Stanton	40	6,721	862,360	128.31	524,280	78.01	60.80%	92.84	152.70
Thayer	43	6,703	625,310	93.29	340,800	50.84	54.50%	62.57	114.81
Thurston	57	3,662	444,929	121.50	319,100	87.14	71.72%	91.52	127.61
Washington	13	1,365	231,250	169.41	143,312	104.99	61.97%	123.83	199.83
Wayne	30	5,071	864,507	170.48	554,474	109.34	64.14%	105.85	165.03
York	46	4,905	685,652	139.79	446,260	90.98	65.08%	92.17	141.63
37 Counties	1,556	308,555	22,743,319	73.71	13,730,720	44.50	60.37%	49.23	81.55

#971.

Compiled by Tax Department of C. & N. W. Ry. Co., Chicago, Illinois. - November 20, 1922.

192 SUMMARY OF C., B. & Q. EXHIBIT 5.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "5," consisting of 12 affidavits of assessors, 11 of which are correctly classified as the County Assessor in five counties, two Precinct Assessors, and four former County Tax Assessors in the State of Nebraska. A correct summary of the contents of those affidavits is revealed by the affidavit of Charles C. Parmele attached which is, in substance, as follows: That he interviewed or caused to be interviewed the remaining affiants; that a fair consideration of the statements in those affidavits in connection with the average assessed value of lands in the counties where such asses-ors resided and of the fair market value of the lands therein, as stated by these asses-ors, is that the assessed value of the lands was but 67% of the fair market value; that one F. N. Slawon, County Assessor of Cheyenne County, Nebraska, stated that he assessed lands in that county, in 1922, at 50% of their fair value but refused to make affidavit. The County Assessor of Kimball County, Nebraska, stated he assessed lands in that county, in 1922, at 50% of the fair market value but refused to make affidavit. That John M. Miles, County Assessor of Gosper County, Nebraska, stated he assessed lands in that county, in 1922, at from two-thirds to three-fourths of the actual market value but refused to make affidavit. A. M. Clark, County Assessor of Adams County, Nebraska, stated that at a meeting of County Assessors called at Grand Island
193 in the spring of 1922 Mr. W. E. Osborne stated, with respect to the assessment of lands for 1922, that if a farm was worth $125 actual value per acre the assessment should be $90 to $95 per acre, which would be about 70% or 75% of the actual market value. The assessor refused to make an affidavit to this effect. Several of the affiants stated that it was their intention to assess real estate at less than its market value because of his understanding with the State Tax Commissioner and local County Boards and for the purpose of uniform valuation.

SUMMARY OF C., B. & Q. EXHIBIT 10.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "10," consisting of 7 affidavits from precinct assessors in five different counties in Nebraska, with respect to the assessed valuations made by them of real estate in their precincts, in some instances in the years 1917 to 1920 inclusive, and in others 1920 to 1922. All of these affiants testify that it was their intention to assess real estate in their precincts at less than its fair cash value. Six of the affiants state that they so valued property for taxation because of an understanding with the State Tax Commissioner, and five of them testify that they had an understanding with the County Boards with respect to such assessment, and six of them testify that such assessments were made for the purpose of uniform valuation; one of them does not testify to any understanding with the

State Tax Commissioner or Local Board, and one of them
194 adds: "But my assessments were made by following my own judgment as to what was fair in making assessments."

The affiant, Parmele, summarizes the other affidavits in substance as follows: That the average percentage of tax assessment to fair market value given by six of the seven foregoing affiants is 72% and six of the seven state it was their intention to uniformly assess at a certain percentage below actual value. The assessor in Richardson County stated that he assessed at 85% of, or 15% less than 1920 assessed valuation.

Summary of C., B. & Q. Exhibit 15.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "15," the affidavit of O. E. Bernecker, County Assessor in Seward County, Nebraska, from 1908 to 1912 inclusive, and Secretary of the State Board of Equalization and Assessment in Nebraska during 1915 to 1918, both inclusive; that in December, 1915, his printed instructions to the County Assessors of the State of Nebraska, amongst other things, advised them: "The basis of actual assessed value agreed upon is 75 per cent of sales values taken all over the state. If this is done, we will have an assessed value of which you all can be proud. The State Board of Equalization & Assessment will assist you through their secretary whenever possible."

In February, 1916, the affiant, as Secretary of the State Board of Equalization sent another circular to the County Assessors in Nebraska, and also a tabulation prepared by the Secretary and issued by the State Board as follows:

(Here follows tabulation marked side folio page 195.)

196 The affiant also stated that while it was his intention, as Secretary of the State Board, to require County Assessors to value lands for taxation at 75% of their value, that lands were not assessed at to exceed 70% of their actual value. "And that it was the intention of myself, as Secretary of the State Board in conjunction with County Assessors, to assess on this basis for entire state, which intention and act Members of the Nebraska State Board of Equalization and Assessment had knowledge of."

C., B. & Q. Exhibit 22.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "22," being an affidavit of E. F. Morgan, which is as follows: "I, E. F. Morgan, on oath depose and say that I am 43 years of age. That from 1897 to 1909 I was employed in the Operating and Accounting Departments of Railroads, and from 1909 to June 15th, 1920, I was employed as Examiner of Accounts and District Accountant for the Interstate Commerce Commission, and since said time have been in the employ of the plaintiff as Assistant Auditor. That in my particular jurisdic-

tion I have supervision of the compilation of various reports to State Commissions and State Tax Boards. Also, within my jurisdiction is all of the valuation accounting of plaintiff with the Interstate Commerce Commission. That in determining the valuation of plaintiff's system of railroad I am advised that the formula most frequently approved by the courts is the total market value of its out-
197 standing capital stock and bonds, and that is the method which is used and considered by all accountants in determining the value of any railroad system, and is the method which I use in ascertaining the value of plaintiff's property first given herein.

1. The total outstanding capital stock of the plaintiff Railroad Company as of December 31st, 1921, was $170,839,100.00. As the capital stock of the plaintiff is not regularly quoted on the Stock Exchange, the few shares occasionally sold are not a true index of the value of all the shares. The value thereof as indicated by its books as of that date was $348,136,397.00, which without doubt is considerably in excess of the actual market value.

The market value on March 31, 1922, of the outstanding bonds of the Company as of December 31st, 1921, based on New York Stock Exchange quotations was $149,690,863.00. Adding this amount to the book value of the capital stock ($348,136,397.00) gives a system value of the property of $497,827,260.00. Included in this total system value is the value of credits, investments in securities and other property situated in other States to the amount of $73,677,476.14, as set out in Paragraph 12 of the plaintiff's petition in this case, which have no relation to the operation of the railroad in Nebraska, the value therein or the rights exercised in the State of Nebraska by this Company. Deducting this amount ($73,677,-
476.14) from the total value of capital stock and bonds, $497,-
198 827,260.00 leaves $424,149,783.86 of which 22.56% or $95,-
687,091.24 is assignable to the State of Nebraska on the following approved formula:

Nebraska proportion of system.	Five-year average, 1917 to 1921, inclusive.
All track mileage	26.63
Car and locomotive mileage	21.15
Tons and passengers one mile	18.85
Gross Operating Revenues	23.65
Average of the four	22.56

The foregoing is the method which I believe should be used in ascertaining the value of plaintiff's property for the purpose of taxation, and which makes an average of $33,438.00 per mile of railway in the State of Nebraska.

While the book value of the capital stock, $348,136,397.00, is used in the above compilation, the U. S. Bureau of Internal Revenue placed as a "fair value" $270,000,000.00 thereon as of December 31, 1921, for the purpose of determining the Federal Capital Stock tax to be collected from and paid by the plaintiff.

Affiant further says that other formulas sometimes used, but of which affiant does not approve in fixing values of railroads for taxation purposes, and to aid in ascertaining value of plaintiff's system by other theories, are given as follows:

2. If the percentage shown above 22.56% be applied to the
199 system 'Investment in Road and Equipment Account' of the plaintiff Railroad Company as of December 31st, 1921, which was $515,760,467.89, it would give $116,355,563.56 assignable to the State of Nebraska.

3. As of July 1, 1913, the Nebraska State Railway Commission placed a value of $104,994,348.00 on the property of the Chicago, Burlington & Quincy Railroad Company. From that date of December 31, 1921, the company has expended $10,388,405.11 for extensions and additions and betterments—road in that State. It also expended in that period the sum of $35,423,661.63 for equipment of which the Nebraska proportion is $7,398,708.32 based on the proportion the Nebraska mileage for each class of equipment for the period bears to the System mileage. The sum of the three items $104,994,348.00, $10,388,405.11 and $7,398,708.32 is $122,781,461.43. This figure does not exclude anything for depreciation since July 1, 1913, on the property in existence as of that date or on that acquired or constructed since that time.

4. The average net railway operating income for the Chicago, Burlington & Quincy Railroad Company in the State of Nebraska for the five years ended December 31, 1921, was $6,982,743.00.

This figure capitalized at 7% would amount to $99,782,043.00.

The values determined by the foregoing four formulas produce an average value for Nebraska of $108,651,522, or $37,969.00 per mile.

200 Affiant further says that he was present when there was presented to the State Board of Equalization and Assessment, on or about the 25th day of July, A. D., 1922, and there and then prepared and filed amended reports required by said State Board in its forms "G" and No. 9, for the reason that the plaintiff Railroad Company had a fire in its headquarters in the City of Chicago, and a large part of its records were burned and destroyed, and in making the original report on said forms "G" and No. 9 the operating expenses and taxes in Nebraska are given as $27,420,906.19 when they actually were $31,289,319.97, being a difference of $3,868,413.68. The first report was made from the defective and incomplete records found after the fire, and the error was not discovered until all the data had been re-assembled and reconstructed, when it was found that from the original report there had not been deducted the Nebraska proportion of federal taxes, hire of equipment, and joint facility rents, and said amended reports, as aforesaid, were filed to correct said mistakes, and that the said difference in the two amounts aforesaid, should be deducted from the net earnings in Nebraska shown on the original reports; that the aforesaid amounts are the true and correct sums which should be used instead of the first erroneous amount given in the original reports. Further affiant saith not."

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibits "23" and "24," which are as follows:

201 C., B. & Q. Exhibit 23.

"R. D. Pollard, being first duly sworn deposes and says that he is tax agent for the Chicago, Burlington & Quincy Railroad Company for its lines west of the Missouri River, and has occupied that position for over thirty years last past. That in the month of May, 1922, affiant appeared before the State Board of Equalization and Assessment at the Governor's office in the Capitol Building in Lincoln, Nebraska, for the purpose of giving said board such information as affiant might have material to a consideration of the valuation that should be made by said board of the Railroad Company's property for assessment in Nebraska for 1922. Amongst other items of information, affiant furnished to said board a written itemized statement of property owned by said Railroad Company located outside the state of Nebraska, and not used in the operation of the Railroad Company's lines of railway, and also an item of shop buildings, tools and machinery, headquarters building, locally assessed, and property owned by the Railroad Company in Nebraska not used in the operation of its lines of railway and locally assessed by the local taxing officers. Affiant valued all of those said items according to his best judgment and information, and upon such information and belief affiant alleges that the valuations so given are correct. The following is a copy of items of property thus furnished and the value of items thus furnished:

202

	Estimated value.
Elevator Investments, Chicago and Burlington...	$326,844.59
Coal Investments, Illinois	$3,663,500.68
Sundry Investments	3,851,553.08
Union Depot Securities	175,349.12
Investments in Terminals	5,319,844.12
Miscellaneous Bonds	1,788,882.22
Stocks & Bonds of Roads held for control.....	27,922,783.87
Cash & Cash Assets—Balance	7,104,797.46
Local Property, Illinois	11,500,000.00
" " Iowa	645,000.00
" " Iowa (Woodbury County)	13,820.00
" " Wisconsin	48,000.00
North Platte to Bridgeport, Nebraska	229,327.00
Local Property, Minnesota	77,500.00
" " Missouri	7,867,500.00
" " Kansas	267,300.00
" " Nebraska	2,171,884.00
" " South Dakota	35,320.00
" " Wyoming	152,200.00
" " Colorado	516,150.00
Total	$73,677,476.14

Affiant further says that he requested the Board not to consider any of said items in arriving at the value of all of the Chicago, Burlington & Quincy Railroad Company's property in the state of Nebraska, subject to assessment by said board."

C., B. & Q. Exhibit 24.

"R. D. Pollard, being first duly sworn deposes and says that he is tax agent for the Chicago, Burlington & Quincy Railroad Company for its lines west of the Missouri River, and has occupied that position for over thirty years last past. That amongst other things it is affiant's duty annually to prepare and transmit to the State Board of Equalization and Assessment for the state of Nebraska, reports upon blanks furnished by said board so as to furnish the information desired by that board, to the end that they may value the property of said Railroad Company in the State of Nebraska for taxation.

203 Affiant further says that as required by said board, he reported to them the valuation of shop buildings, shop tools and machinery at the locations in said state where the Railroad Company maintains shops, and also the Omaha office furniture in the headquarters and city ticket office, Omaha headquarters, lands and buildings, in the following amounts:

Plattsmouth Shop Buildings	$161,502.00
Plattsmouth Shop Tools and Machinery	69,700.00
Havelock Shop Buildings	751,920.00
Havelock Shop Tools and Machinery	364,615.00
Ford Auto Truck	200.00
McCook Tools and Machinery	30,000.00
Office Furniture, Fixtures, Library, etc., general offices	8,000.00
Office Furniture, Stock Yards Office Building	150.00
General Office Building, Omaha, exclusive of land	92,000.00
Other Real Estate in Omaha not used in the operation of the railroad	41,300.00
Total	$1,519,387.00

Affiant further says that the local assessors of the counties where all and singular the foregoing property is located, valued said property for local assessment, and the state, county, and school district taxes were levied upon that valuation. Affiant further says that these facts were brought to the attention of the State Board of Equalization and Assessment by affiant testifying as a witness before them on the 25th day of July, 1922, and Honorable Hugh Lamaster, Assistant Attorney General representing the state authorities, cross examined affiant's testimony on that subject."

204 C., B. & Q. Exhibit 27.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit "27", being a notice

from the Secretary of the Nebraska State Railway Commission to the plaintiff dated March 16, 1912, which is as follows:

"Nebraska State Railway Commission.

H. J. Winnett, Chairman; A. B. Allen, Secretary; Henry T. Clarke, Jr., Thomas L. Hall.

Lincoln, March 16, 1912.

Mr. Byron Clark, G. S., C. B., & Q. R. R. Co., Omaha, Nebraska.

DEAR SIR: This is to notify you that the Nebraska State Railway Commission, acting under the provisions of chapter 107, Nebraska Session Laws of 1909 (commonly known as the physical Valuation Act), has completed its appraisal of the C. B. & Q. Co.'s property in the state of Nebraska, and finds the value of the same, as of July 1, 1909, to be as follows:

	Reproduction value new.	Present value.
Total value	$122,005,176.92	$104,037,188.98
Average per Mile of Rdwy...	42,808.83	36,504.28
Average per Mile of Track...	35,024.94	29,866.73

As provided by section 10 of the Act, the Commission will sit in its office at Lincoln, Nebraska, on Wednesday, April 17, 1912, at 10:00 o'clock a. m., at which time your company "may appear and show cause why such valuation as found by the Commission
205 should be raised or lowered or amended or changed in any particular.' Complete detailed reports of the Commission's engineering department, upon which the above totals and averages are based, are on file in the office of the Commission, and may be inspected by representatives of your company at any time. Very truly yours, A. B. Allen, Secretary."

Same letter to G. W. Holdrege, G. M. C. B. & Q., Omaha; F. T. Darrow, Chief Eng., Lincoln."

C., B. & Q. EXHIBIT 26.

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 26, being the affidavit of Kathleen Egan, which is as follows: "Kathleen Egan on oath says that she is a Clerk and Stenographer for Byron Clark, Solicitor for the Chicago, Burlington & Quincy Railroad Company at Omaha, Nebraska. That on July 28th, 1922, she wrote for and said Byron Clark signed a letter as follows:

'Omaha, July 28th, 1922.

'Hon. W. H. Osborne, Tax Commissioner, Lincoln, Neb.

DEAR SIR: I suppose it is unnecessary but nevertheless I request that you do not, under section 8 of Article XI (Sec. 5905, Com-

piled Stat. 1922) of the Revenue Act, certify the State school general and special taxes to the respective county clerks until the complaining railroads, C. & N. W., U. P., and the Burlington have time to see your decision and determine the course they should pursue within the ten days permitted by Section 4. Yours truly, Byron Clark, Solicitor.'

That said letter was duly sealed with stamp upon the envelope and placed in the ordinary course of mail and by the ordinary schedules it should have been received at Lincoln on July 29th,
206 1922, by the addressee, Mr. Osborne. That in answer thereto was received the following letter:

State of Nebraska Tax Commissioner.

Lincoln, August 1, 1922.

'W. H. Osborne, Commissioner.

Mr. Byron Clark, Solicitor C. B. & Q. R. R. Co., Omaha, Nebraska.

DEAR Mr. CLARK: We have your letter of July 28th, in which you request us to not certify the State levy, and valuations until the complaining roads have time to see the decision of the State Board.

The State levy, will be made tomorrow, August 2, and we will let you know what the decision of the Board has been. But under Section 8 of Article XI of the Revenue Act (Sec. 5905, Comp. Stat. 1922) we are compelled to certify the levy and valuations out, not later than August 2. Very truly yours, Harry W. Scott, Deputy Tax Commissioner.'

which was received at the office of the said Byron Clark on August 2nd, 1922. Further affiant saith not."

The plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 30, being the complaint filed by this plaintiff before the Nebraska State Board of Equalization and Assessment in 1922, filed July 3, 1922, which is as follows:

C., B. & Q. EXHIBIT 30.

"BEFORE THE NEBRASKA STATE BOARD OF EQUALIZATION AND ASSESSMENT.

In the Matter of the Equalization of the Property of the CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY in Nebraska for Taxing Purposes for 1922.

Complaint.

Comes now the Chicago, Burlington & Quincy Railroad Company and shows to this Honorable Board:

207 1. That is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and that it is and for many years last past has been authorized to transact business in the State of Nebraska; that complainant's business is that of a common carrier by rail for hire of passengers and freight and that its business is both intrastate and interstate in character.

2. That all of the property of your complainant in the State of Nebraska and in the several counties in said State through which your complainant's lines of railroad have been constructed, and are operated, subject to assessment by the State Board of Equalization and Assessment, has been assessed and valued by it for 1922 according to law for the purposes of taxation, and return has been made to the respective county clerks of the several counties in Nebraska as provided by statute.

3. That all and singular the county assessors and county boards of equalization of the State of Nebraska have prepared and filed pursuant to law with this board, abstracts of the assessment rolls of their respective counties, including therein the assessed valuation of complainant's property theretofore certified by this board to the several county clerks of the respective counties; that those abstracts are now on file with this Honorable Board to the end that all the properties in the State of Nebraska shall be equitably assessed as required by law.

208 4. Your complainant further shows that the several county assessors and county boards of equalization in all and singular the counties in the State have valued for assessment purposes in their respective counties for taxing purposes, for 1922, all property other than railroad properties at not to exceed fifty per cent of the actual value of said property.

5. Your complainant further alleges that the constitution and laws of the State of Nebraska provide that the property of your complainant be valued at its actual value for taxing purposes on the same basis used for the valuation and assessment of all other classes of property in the State of Nebraska, not exempted by law from taxation; that if the valuation of complainant's property be not reduced to the same percentage of actual value applied to other property valued and assessed by the several county assessors and county boards of equalization, or unless all other property in the State except the property exempted by law from taxation be valued and assessed by increasing such valuation and assessment, and all of the classes of property provided for by statute to be assessed at its actual value from said fifty per cent of the actual value to the percentage at which complainant's property has been assessed by this Honorable Board, your complainant will be denied equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Nebraska,
209 and complainant's property will be taken for public purposes without just compensation, and without due process of law, in derogation of sections 3 and 21, Article I, of the Bill of Rights of the Constitution of the State of Nebraska, and of the Fifth and

Fourteenth Amendments to the Constitution of the United States, which provide amongst other things that no person shall be deprived of life, liberty of property without due process of law, nor shall private property be taken for public use without just compensation, and that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

6. That this complaint is made with respect to the assessments of property by the local assessors and the county boards of equalization in all and singular the counties within the State of Nebraska.

7. Your complainant is ready and willing, and now offers to produce competent evidence to establish the truth of all and singular the allegations in this complaint contained.

Wherefore, your complainant prays:

1. That this Honorable Board fix a day and hour for a hearing of this complaint.

2. That it forthwith issue notices to all and singular the counties of the State, as provided by section 4 of Article XI, chapter
210 133, page 592, Laws of Nebraska, 1921, of the time and place where such hearing will be had to the end that all and singular the said counties will be represented at said hearing, and that this Honorable Board either reduce the valuation of your complainant's property for assessment and taxation purposes in this State and in each county thereof for 1922 to the same percentage of actual value as the percentage at which other property subject to taxation in the State of Nebraska has been valued by the several county assessors and county boards of equalization in the State of Nebraska, or that this Honorable Board shall raise and increase the valuation of all classes of property in each county within the State of Nebraska to the same percentage at which complainant's property has been assessed, to the end that the property of your complainants as assessed shall stand as near as may be upon the basis of equality with the property of other taxpayers and 'so that the resulting taxation shall be substantially uniform' as between the property of your complainant and the other property in this State, and to the end that the assessment against the property of your complainants shall be 'on the same basis' as other property. Chicago, Burlington and Quincy Railroad Company, By R. D. Pollard, Its Tax Agent.

211 C., B. & Q. Exhibit 29.

Bill of Exceptions of Hearing Before State Board of Equalization.

The plaintiff introduced and there was received and read in evidence, without objection, C. B. & Q. Exhibit "29," the same being bill of exceptions of the testimony adduced by various railroad companies, including the Chicago, Burlington & Quincy Railroad Com-

pany, before the State Board of Equalization and Assessment to support complaints made in the years 1921 and 1922 by said railroad company with respect to the valuation of their property in Nebraska for taxation as compared with the valuations of other properties in the state for the purpose of taxation, and particularly real estate.

The evidence submitted to the State Board of Equalization and Assessment in 1921 was also submitted and before the Board, with the additional evidence submitted, in 1922, by the railroad companies, including the Chicago, Burlington & Quincy Railroad Company.

The following was first introduced at the hearing in 1921:

Present at that hearing: Hon. George W. Marsh, Auditor of Accounts, Hon. D. B. Cropsey, Treasurer, and Hon. D. M. Amsberry, Secretary of State, presiding in the absence of the Governor, all officers of the State of Nebraska, Hon. William H. Osborne, Jr., Tax Commissioner of the State. Mr. Byron Clark, Solicitor for Chicago, Burlington & Quincy Railroad Company, Mr. C. A. Magaw, General Attorney for the Union Pacific System and the St. Joe & Grand Island Railway Company, and Mr. Wymer Dressler, Attor-
212 ney for the Northwestern Lines.

On Friday, July 22d, 1921, the following proceedings were had: Evidence was adduced by one railroad company to be considered on the part of the other railroad companies. The Chicago, Burlington & Quincy Railroad Company offered the resolution of the State Board of Equalization and Assessment in 1920, valuing the property of that railroad company for assessment as follows:

RESOLUTION OF STATE BOARD VALUING RAILROAD PROPERTIES FOR 1920.

"The following resolution was unanimously adopted: Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, moneys, credits, franchises and all other property of said railroad companies and, having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount of secured and unsecured indebtedness, and from all the information which we are
able to obtain do hereby ascertain, appraise, fix and assess
213 for the purpose of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, Burlington & Quincy Railroad Company, $131,765,605.00. * * *"

The following was admitted to be a plan and explanation of procedure of the State Board of Equalization and Assessment prepared by its Secretary and by Mr. Bross, Secretary of the Department of Finance of the State of Nebraska, and referring to the equalization of values for the year 1920, and was adopted by the Board and followed in the equalization of that year:

PLAN OF STATE BOARD.

"To the State Board of Equalization and Assessment:

In accordance with the request of your Board and in compliance with the motion passed at the meeting of the County Assessors and others representing the different counties of the State, a tentative plan of equalization between the counties of lands and improvements is herewith submitted for your consideration:

Before the assessment period began, a list of the transfers of lands in the different counties, from July 1, 1918 to July 1, 1919, was secured from the proper county officials. The list as sent in gave the number of transfers, the description of the land, number of acres, consideration, and 1919 assessed value of the same acres.

When these lists were received, they were carefully checked over and transfers which plainly showed they were not bonafide
214 sales were not used in compiling the average sale value for the county. These tabulations showing the average sale value for each precinct were furnished to each precinct and county assessor and they were instructed by the Department and by the Association of County Assessors to follow the law and fix the assessed value of all lands and improvements, as well as all other property, at the actual cash market value in the ordinary course of trade.

For the purpose of equalization between counties, it would hardly have been fair and just to take the average sale value as shown by the transfers. Good land might have been selling in one county while a cheaper grade of land was selling in another county. To correct this discrepancy, the assessed value for 1919 of the lands shown on the transfers was compared with the average assessed value of the county and this ratio was applied to the average sale value as shown in the transfers to establish the sale value per acre of the county which is shown in the second column of the prepared tabulation.

For instance, the average sale value of the transfers for Douglas County showed a sale value of $267.70 and these same acres were assessed for an average of $100.90. The average assessed value of the whole county was $96.90. To establish the sale value of Douglas County 96.90/100.90 of $267.70 is taken which gives $257.08 as the sale value. In other words, as the assessed valuation of the lands sold is to the consideration shown by the transfers, so
215 the assessed valuation of the entire county is to the selling value thereof.

The average value was established as above stated for practically each county, and this was used as the basis for the suggested equalization. In two counties, the list of transfers was never furnished and in one or two other instances, the lists furnished were not complete, or plainly showed that they were not reliable.

This method of establishing the average value per acre for a county has long been used by the Tax Commission of Wisconsin and has also been adopted by the Tax Commission of Minnesota.

The use of sales records and the adjusted average value for equalization purposes between counties makes a uniform and reliable plan which should fairly and justly equalize the real estate assessment between counties. The relative assessment of the different grades of land within a county cannot be considered by the State Board. The precinct assessors, county assessors and the County Boards determine the different grades of land within a county and assess them accordingly. The State Board only deals with the average of the county as compared with the average of the other counties of the State.

As has been stated, each county and precinct assessor was instructed to follow the law and, with all the information he could secure, including the record of the sale averages, assess all real estate and improvements at the actual market value.

216 The abstracts of assessment have been received covering lands and improvements for all the counties except Arthur. The returns show that the precinct assessors and other local assessing officials throughout the State have placed a value on lands and improvements which average over 68% of the average value as established by the ratio process based on actual sales. It would seem only fair and just that the State Board would accept this average valuation established by almost 2,000 precinct assessors and in equalizing the land and improvements between counties, maintain, as nearly as possible, for each county, an assessed actual valuation of 68% of the actual value as established by the ratio process.

The suggested equalization has been carried out with this end in view and the percentages shown in column five approximate 68%. In preparing the tabulation, adjoining counties have been grouped together for comparison purposes.

In counties where the assessment was returned at approximately 68%, no change has been made. In some counties the equalization to the 68% average would have made so great a percentage of change that it would have, without doubt, established within that county an unfair assessment of lands and improvements in comparison with other classes of property. As the sales are for only one year, in some cases it has seemed wise to take other information into consideration in equalizing some of the counties.

217 As directed by your Board yesterday, the counties where an increase is contemplated, have been notified and August 6th was set by your Board for hearing any protests. Besides advising counties where a raise is suggested, the tabulation showing the proposed changes by the State Board have been sent to the clerks, assessors and county board of all counties.

If the different grades of land within a county have been properly equalized by the county officials, obviously no injustice is done any county or taxpayer, if the lands and improvements are equalized as between counties on the basis of actual valuation as determined by the ratio process from actual sales. Courts recognize the price paid for similar property in the vicinity as the best evidence of value. A normal sale represents the judgment of both purchaser and seller as to the value of the property sold—one parts with his money and the other with his property on the basis of the consideration paid. When these sales cover a year's period and are averaged for each county and for the State; and when the assessed valuation of the lands sold is compared with the average assessed valuation of the county, no injustice will be done any county in establishing this basis for equalization purposes. Philip F. Bross, Secretary Department of Finance. W. H. Osborne, Jr., Secretary State Board of Equalization."

218 There also appears in that bill of exceptions a printed statement of the Board of Equalization and Assessment concerning the result of its 1920 equalizations of values of property for taxation and an admission that the same is genuine, as follows:

"Statement by the State Board of Equalization.

In the matter of equalization between counties, the State Board has adhered to the early announced plan of accepting for valuation purposes the average value placed on lands and improvements by the precinct and county assessing officials. For equalization between Counties, the value returned by the assessing officials of each county has been compared with the average real value, as established by the ratio process, based on bonafide sales from July 1, 1918, to July 1, 1919. The equalization of the counties on the basis of the sale average was requested of the Board at the meeting of the assessing officials of the counties held July 20th, 1920. The ratio process, used in correcting the sale averages, is the plan used by Wisconsin for a number of years, and Minnesota and other states have adopted the same plan.

Under this plan of equalization, the State Board has the combined judgment, as to value, of the assessing officials of the counties and of the buyers and sellers of real estate for a year's period. The year taken was previous to the land boom and does not cover the period of the highest prices.

The valuations as returned by the County Boards average 68% of the real value, as determined by the ratio process, and the State Board adopted this 68% as the basis for equalization purposes.

219 The Board has recognized throughout that land sales represent a more or less speculative value, and for this reason it would seem that the per cent taken of the real value is a just valuation for assessment purposes.

The returns from the counties were either increased or decreased, as was found necessary, to approximate the 68% of the real value.

In most cases, where the returns came in near the 68% average, no change was made. In some cases it was felt a decrease, large enough to bring the returns to the 68% average, might be unfair and interfere with the valuation necessary for the county levy. In other cases, it appeared that an increase, large enough to bring a county up to the 68% average, might be unjust and unreasonable.

That the Board has adhered very closely to the above plan is shown by the fact that the average real value, as determined by the ratio process, for the state was $94.33, and the average value for assessment purposes $64.98, or 68%.

Under this plan, the Board has accepted and adopted the average valuation of the local assessing officials. In making this equalization the State Board has decreased the total value of lands and improvements of the State $91,317,444.00, or $18,263,549.00 assessed value. The record shows that the State Board in 1916, increased the value of lands and improvements when they made the equalization, while this Board, as above stated, has decreased the total assessed value $18,200,000.00.

After the equalization by the State Board, some of the more important classes of property show the following increases for the four year period, 1916-1920:

	1916.	1920.	Per cent increase.	
Lands and Improvements	$266,460,319	$433,645,488	62	
Lots and Improvements	79,567,452	110,984,397	39	
Money on land	5,508,665	11,323,775	105	
Automobiles	4,192,375	15,391,906	263	
Merchandise	10,345,525	19,814,314	91	
Value of Interest in State Lands	511,686	738,884	44	
Improvements on Leased Lands	1,313,042	1,726,729	31	
Hogs	3,099,528	5,782,335	86	
Sheep	143,007	461,788	180	
Horses	12,985,586	11,729,435	9	Decrease.
Cattle	15,829,806	22,995,883	45	
Mules	1,958,433	2,131,812	8	
Total Live Stock	$34,016,370	$43,041,253	26	
Shares in Bank Stock	7,718,128	10,487,057	35	
Total Personal Property	$154,834,316	$231,319,875	40	
Grand Total	500,873,016	775,949,730	54	

During the six years previous to 1919 the increase of total assessed value of all property was 20%. During that same period of six years, the assessed valuation of railroads was not increased by the State Board as then composed, except a small amount—$1,026,125,

due to increased mileage. This year, the assessed valuation of the railroads was increased by $5,500,282.00 and the terminal assessments have been increased about the same percentage as the town property.

221 The following table will shown the assessed valuation of railroads for the last eight years, and that the only material increase is the raise given by the State Board this year:

1913.....	$55,829,328.00	1917.....	$56,855,453.00
1914.....	55,945,074.00	1918.....	56,855,453.00
1915.....	55,945,074.00	1919.....	56,867,503.00
1916.....	56,833,234.00	1920.....	61,367,785.00

In this connection, it is interesting to note the average per mile assessed valuation of railroads in the surrounding states. The following table shows plainly that the railroads are assessed at a greater value in Nebraska than in the other states:

	Northwestern.	Union Pacific.	Burlington.
Nebraska	37,975	74,711	46,040
Kansas	....	42,000	25,600
Colorado	....	40,732	47,218
Wyoming	27,022	52,000	33,179
South Dakota	30,500	....	40,580
North Dakota	24,650	....	....
Illinois	42,500	....	....
Iowa	38,500	....	....

(Wyoming figures are for 1919. Others for 1920.) (The double track and other improvements on the Northwestern in Illinois and Iowa accounts for the higher valuation in those states.)

The increase in valuation this year need not bring about any material increase of taxes. Except for possibly certain fixed levies, tax levies for every tax sub-division should be reduced so that

222 only the necessary revenue will be raised. The State Board has no control over local levies but if local authorities reduce the tax levies based on the increased valuation over 1919, there should be no great increase in taxes paid this year over 1919. It should be borne in mind that only 19 cents out of every dollar of tax goes to the support of the State government, while 81 cents is for local purposes."

There appears in this bill of exceptions from an admitted accurate copy of a resolution adopted by the State Assessors in Nebraska March 19, 1921, and in instructions, and given to all the County Assessors in Nebraska following this resolution, the following:

"State of Nebraska,

Department of Finance,

Bureau of Revenue and Taxation,

Lincoln.

To the County Assessor Addressed:

RESOLUTION ADOPTED AT STATE ASSESSORS' MEETING, MARCH 18, 1921.

At a meeting of the County Assessors held at Lincoln, Nebraska, on March 18th, 1921, the following resolution introduced by Harry W. Scott of Pawnee City, was adopted:

Whereas, There has been an expression representing the sentiment of sixty-four counties and the result of such expression seems to average fifteen per cent reduction under 1920 real estate values,

Therefore, Be it resolved that it be the sence of this meeting that the aggregate returns of the value of real estate in each county be returned to the State Board at not to exceed a fifteen per cent reduction.

223

It being understood that this shall in no way be binding upon any county, but merely suggests a uniformity of action.

Dated this 19th day of March, 1921. G. L. Mumford, Sec'y-Treas.

The above and foregoing is a verbatim copy of a resolution adopted by the County Assessors of the State at their meeting held in the City of Lincoln, on March 18th, 1921, and it is requested by this department that you read the resolution over carefully, so that the result of their labors will be in accordance with the thought of the conference. We very much desire to avoid the necessity of being compelled to again equalize to any great extent by counties this year, feeling as we do, that we have a very good equalization over the State at this time, but where the occasion demands the State Board will not shirk its duty to fairly and equitably raise or lower any county to the end that each bears its just relation, one to the other.

The unexpected passage of this emergency law makes it impossible for this department to follow up with any figures to assist you and you will have to rely on last year's figures, together with your knowledge of your local county and in addition to this, follow instructions from this department and the law governing your duties. Respectfully submitted, Philip F. Bross, Secretary Department of Finance. W. H. Osborne, Commissioner."

224

An admitted resolution adopted by the State Board of Equalization and Assessment valuing the railroad company in the State of Nebraska for the purpose of taxation for the year 1921, is found in said record as follows:

RESOLUTION OF STATE BOARD VALUING RAILROAD PROPERTIES FOR 1921.

"The following resolution was adopted:

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska for the purpose of taxation of their property in the said state and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, warehouse tracks, road bed, right of way and depot grounds and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies, monies, credits, franchises and all other property of said railroad comp-nies and, having taken into consideration the gross and net earnings of said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the total
225 amount of secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purposes of general taxation the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited.

Chicago, Burlington & Quincy Railroad Co., $131,765,605.00.

* * *"

The following from the instructions issued to County and Precinct Assessors by W. H. Osborne, Jr., Tax Commissioner for the State of Nebraska, in 1921, was admitted in evidence:

(Title Page.)

"UNIFORM INSTRUCTIONS TO COUNTY AND PRECINCT ASSESSORS FOR THE YEAR 1921.

As Approved by the Nebraska Tax Commission.

W. H. Osborne, Jr., Tax Commissioner.

Instructions to Assessors.

Nebraska Tax Commission.

Lincoln, Nebr., Feb. 17, 1921.

To county and precinct assessors:

The following revised instructions are to be observed in the assessment of property both real and personal in the State of Nebraska for the year 1921.

In past years it has been the custom of each County As-
226 sessor to issue his own individual instructions to his Pre-
cinct Assessors, and the result was, that the assessing authori-
ties of the 93 counties in the State were working under that many
different sets of instructions.

We ask that each Assessor study the instructions carefully, so that
when his work is completed he will have the satisfaction of knowing
that his work has been done according to law.

It is the belief of this department that by the use of these uniform
instructions, it will be the means of a more equitable distribution of
the tax burden, and a decided improvement over the discarded
method.

We can hardly expect to lessen the tax burden for some time to
come but the public has the right to demand that taxes shall be
equally distributed, and while I appreciate the difficulty of your task,
yet I am confident that considerable progress can be made if we will
all do our best.

If this department can be of any assistance to you at any time,
feel at liberty to command us. W. H. Osborne, Jr., Tax Commis-
sioner."

Before the State Board, in 1921, the railroad companies, including
the Chicago, Burlington & Quincy Railroad Company, produced and
there were sworn four witnesses, all of whom testified that with
respect to various counties in the State of Nebraska they examined
the records of those counties commencing July 1, 1919 and
227 continued on down to about July 11, 1921; ascertained the
consideration recited in all warranty deed transfers in that
county conveying land of forty acres or more, and ascertained the
assessed value of each of said tracts of land in 1920 and 1921; that
from this information they prepared computations; that they ap-
plied the rules adopted by the State Board of Equalization and As-
sessment in 1920 and 1921; that their work was correctly performed
and the result transferred to A. W. Scribner. The railroad com-
panies, including the Chicago, Burlington & Quincy Railroad Com-
pany, then stated to the Board they had other men present who had
examined the real estate records in various counties of the State, to
testify as the four preceding witnesses testified, and the following
colloquy occurred:

"Mr. Clark: Now, gentlemen, I have all of the men here that have
examined each of the counties so far as we are introducing them.
Do you want me to put each one of them on the stand here? We
have had each process used by each road now testified to.

Mr. Osborne: They have already submitted their testimony I
take it.

Mr. Clark: But I have a lot more here covering all of the counties.

The Chairman: I do not think you need do that. I think you
have sufficient testimony on that.

Mr. Clark: All of the cards of all of the counties will be
228 here subject to test and verification."

The result of the information secured by the witnesses last referred to is correctly tabulated and a recapitulation of the same is as follows:

(Here follows recapitulation, marked side folio page 229.)

230 Exhibit "O" in the bill of exceptions of the proceedings of the State Board of Equalization and Assessment for 1921 is a compilation of the information secured by the expert witness Scribner from the work of the field men hereinbefore testified to and from information furnished Scribner by the defendant Osborne, which said exhibit is as follows:

(Here follows Exhibit O, marked side folio page 231.)

232 There was received in evidence before the State Board of Equalization and Assessment, without objection, from a report issued by the Department of Agriculture of the State of Nebraska, March 1st, 1921, concerning agricultural statistics for that state, the following:

EXTRACT FROM NEBRASKA DEPT. OF AGRICULTURE REPORT FOR 1921.

"There has been a slight decrease in farm land values, which is rather exceptional. The average value of plow lands now and a year ago are as follows: Poor plow lands $85 and $85 per acre, good plow lands $150 and $150, all plow lands $125 and $125. The average price per acre of all improved farm lands is $125 against $135 a year ago. All unimproved farm lands average $95 per acre as compared to $110 a year ago. In connection with the above figures it must be remembered that 26% of the farm land is within the sandhill area of the state where values are very low when compared to the remainder of the state."

No evidence was adduced by the State Board of Equalization not by any person or persons other than the railroad companies.

233 On July 25, 1922, the Chicago, Burlington & Quincy Railroad Company, and other railroad companies, by their representatives, appeared before the State Board of Equalization and Assessment, in session in Lincoln, Nebraska. Present: Hon. D. M. Amsberry, Secretary of State, presiding in the absence of the Governor. Hon. George W. Marsh, Auditor of Accounts, Hon. D. B. Cropsey, Treasurer, Hon. W. H. Osborne, Jr., Tax Commissioner, and Hon. Hugh Lamaster, Assistant Attorney General. Mr. Byron Clark, Solicitor for the Chicago, Burlington & Quincy Railroad Company, Mr. C. A. Magaw, General Attorney for Union Pacific System, and Mr. Wymer Dressler, for the Northwestern Lines.

RECAPITULATION.

SHOWING THE TOTALS OF THE LISTS OF LANDS CONVEYED BY WARRANTY DEEDS BETWEEN JULY 1st, 1919, AND JULY 1st, 1921, IN 54 NEBRASKA COUNTIES, AND A COMPARISON OF THE SALES VALUE OF THE LANDS WITH THEIR ASSESSED VALUATION FOR THE YEARS 1920 and 1921.

COUNTIES	NUMBER OF DEEDS	NUMBER OF ACRES SOLD	TOTAL CONSIDERATION AS SHOWN BY THE DEEDS	ASSESSED VALUATION OF THE SAME LANDS 1920	ASSESSED VALUATION OF THE SAME LANDS 1921	AVERAGE SALE PRICE PER ACRE	AVERAGE ASSESSED VALUE PER ACRE OF SAME LANDS 1920	AVERAGE ASSESSED VALUE PER ACRE OF SAME LANDS 1921	PER CENT OF ASSESSED VALUE TO SALES VALUE 1920	PER CENT OF ASSESSED VALUE TO SALES VALUE 1921	PER CENT OF REDUCTION OF 1921 ASSESSMENT FROM 1920 ASSESSMENT.
Banner	73	26,788	$749,077.66	$395,365	$282,115	$27.96	$14.76	$10.53	52.78	37.66	28.64
Blaine	60	32,697	378,420.00	158,644	138,020	11.77	4.94	4.30	41.9	37.2	13.
Box Butte	303	68,716	2,837,641.	802,510	678,380	41.29	11.67	9.84	28.28	23.90	15.46
Buffalo	248	45,113	4,619,580.	2,458,650	2,145,225	102.40	54.5	47.55	53.2	46.4	12.8
Cass	119	12,736	2,823,622.35	1,549,140	1,246,695	221.72	121.63	97.89	54.9	44.15	19.52
Chase	70	21,639	789,250.	299,200	256,434	36.47	13.82	11.85	37.9	32.49	14.26
Cheyenne	333	83,020	5,419,657.	2,271,350	2,271,350	65.28	27.36	27.36	41.9	41.9	0
Dawson	273	58,775	4,749,400	2,673,300	2,228,295	80.80	45.48	37.90	56.1	46.9	16.8
Deuel	140	33,273	2,236,730	1,029,680	875,228	67.20		26.60	46.4	39.2	15.
Dundy	227	87,586	1,965,012	960,625	820,308	22.44	10.67	9.37	48.88	41.75	14.38
Fillmore	187	22,192	3,339,555	2,173,925	1,797,855	153.18	97.96	81.01	60.50	52.88	23.29
Franklin	217	35,476	2,599,395	1,884,025	1,272,305	73.27	53.11	35.86	72.48	48.95	32.47
Furnas	535	95,400	5,502,233	3,167,158	2,722,111	57.59	33.20	28.53	57.48	49.38	14.05
Gage	150	18,390	2,966,798	1,601,854	1,463,692	161.33	87.10	79.59	54.	49.	8.63
Garden	150	68,235	1,392,833	795,209	686,884	20.41		10.07	57.9	49.3	13.6
Garfield	91	29,960	730,810	416,645	253,337	24,39	13.90	11.79	57.	48.3	15.2
Gosper	199	42,001	2,476,976	1,264,209	1,138,296	58.97	30.10	27,10	51.03	45.95	11.18
Grant	57	33,423	291,762	150,005	129,975	11.72	4.48	3.89	38.29	33.18	13.35
Greeley	167	33,230	2,923,740	1,546,686	1,324,180	88.00		39.85	52.9	44.9	14.3
Wheeler	76	30,712	960,620	441,465	391,982	31.27	14.37	12.76	46.	40.8	11.2
Hall	115	15,313	2,025,172	1,017,960	880,485	132.25	66.47	57.5	50.	43.5	13.5
Hamilton	171	19,774	3,478,252	1,786,925	1,567,033	175.80	85.57	79.25	51.38	45.05	12.31
Harlan	226	39,889	2,917,675	1,516,150	1,324,585	73.15	38.01	33.21	51.96	45.40	12.63
Hitchcock	360	89,218	3,369,698	1,727,179	1, 659,193	37.10	19.36	18.60	52.18	50.13	3.94
Hooker	83	44,102	397,242	249,340	212,345	9.00	5.65	4.81	62.77	53.45	14.84
Webster	179	27,078	2,302,615	1,379,825	1,194,070	85.04	50.96	44.19	59.92	51.86	13.46
Howard	235	40,712	4,381,079	2,012,190	1,701,195	107.60		41.80	45.9	38.8	14.5
Jefferson	145	20,084	2,553,242	1,576,055	1,431,237	126.57	78.47	71.26	62.00	56.	9.19
Johnson	150	19.041	3,204,227	2,040,055	1,565,087	168.28	107.14	82.25	63.66	49.84	23.28
Kearney	199	26,754	3,009,873	1,633,425	1,354,135	112.50	61.05	50.61	54.3	44.98	17.09
Keith	168	60,243	2,812,352	1,297,139	1,001,927	46.68		16.63	46.2	35.6	22.8
Valley	213	43,142	4,048,710	2,007,310	1,640,715	93.85		38.00	49.6	40.5	18.
Kimball	308	100,170	4,415,782	2,202,250	2,202,250	44.08	16.02	16.02	49.9	49.9	0
Lincoln	446	171,453	5,173,416	1,633,650	1,369,069	30.18		7.99	31.6	26.5	16.2
Loup	78	31,653	473,095	231,099	198,857	14.94	7.30	6.25	49.	41.8	14.3
Merrick	162	26,000	3,538,683	1,754,720	1,437,409	136.10		55.29	49.6	40.6	18.1
Morrill	277	72,332	3,103,136	1,371,276	1,158,977	42.90		16.02	44.2	37.4	15.5
Thomas	92	55,953	547,306	306,344	240,350	9.18	5.48	4.29	56.06	43.92	21.67
Nance	171	34,213	4,398,327	2,550,110	1,922,217	143.20		56.48	52.6	39.2	24.6
Nemaha	170	15,889	3,238,558	1,808,185	1,439,546	203.92	103.80	90.62	55.83	44.45	20.39
Otoe	266	32,450	6,459,148	3,766,340	3,278,823	199.05	116.07	101.05	58.31	50.75	12.50
Pawnee	115	15,893	2,033,422	1,211,509	1,048,362	127.94	76.23	65.97	59.00	51.00	13.47
Phelps	275	50,097	4,455,466	2,724,379	2,355,044	88.94	54.39	47.01	61.16	52.86	13.57
Red Willow	554	115,342	5,639,030	3,183,305	2,892,508	48.89	27.60	25.08	56.45	51.28	9.14
Richardson	273	26,019	5,282,830	2,814,265	2,386,227	203.04	108.16	91.71	53.27	45.17	15.21
Thayer	263	38,347	4,739,146	2,617,250	2,347,617	123.59	68.25	61.22	55.23	49.54	10.3
Saline	224	25,375	4,072,153	2,585,480	2,270,659	160.48	101.89	89.49	63.49	55.76	12.18
Sarpy	49	5,021	1,135,307	568,150	478,375	226.11	113.15	95.27	50.04	42.14	15.80
Scotts Bluff	169	17,796	1,951,258	783,605	672,433	109.65	44.03	37.78	40.16	34.46	14.19
Sherman	210	43,050	3,535,870	1,653,225	1,437,242	82.36		33.38	46.8	40.6	13.1
Sioux	226	112,732	2,312,674	1,401,015	1,117,822	20.51	12.42	9.92	60.58	48.33	20.21
Total	10,166	2,314,504	$154,736,107	$82,617,513.	$67,908.461.	$66.85	$35.69	$29.34	53.38	43.88	17.79

(Here follows Exhibit O to Bill of Exceptions, marked side folio page 231.)

On this hearing the record of the evidence adduced as aforesaid in 1921 by the railroad companies was introduced in evidence. There was also introduced copies of the reports made under the statute of Nebraska to the State Board of Equalization and Assessment for the year ending December 31, 1921, for the Chicago, Burlington & Quincy Railroad Company being as follows:

234 STATEMENT.

Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co., for the Year Ending December 31, 1921.

Mileage in Nebraska. Total Operated Mileage...		2,906.02
Capital Stock (System)		170,839,100.00
Gross Earnings in Nebraska.....		41,160,307.23
Passenger		7,818,276.07
Freight		30,044,617.32
Other Sources		3,297,413.84
Operating Expenses for Nebraska, including Taxes, Maintenance, Repairs, and Renewals.....	$25,213,372.34	
Operating Expenses, excluding Additions, Taxes, and betterments.	2,207,533.85	
		27,420,906.19
Net Earnings in Nebraska.....		13,739,401.04
Earnings per Mile, Gross		14,163.81
Earnings per Mile, Net		4,727.91
Interest on Debt (System)		6,807,134.36
Dividend Made (System) {Cash.....		44,925,917.00
Dividend Made (System) {Stock.....		60,000,000.00

I, H. W. Johnson, Comptroller of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) H. W. Johnson, Comptroller.

Subscribed in my presence and sworn to before me this 7th day of April, A D. 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

NOTE.—The above statement should be sworn to by the President, Secretary or Treasure- of the Company and should be made to the Auditor of State during the month of January (See Section 88, Chapter 16, compiled Statutes of Nebraska, 1887.)

235 STATEMENT.

Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Total gross earnings during the year for which made In Nebraska	$41,160,307.23
Total net earnings during the year for which made In Nebraska	$13,739,401.04
Total amount expended in operation or maintenance of the property and the improvements thereof	(See Note.)
Amount of same expended in Improvements or Betterments	(See Note.)
Amount expended in maintenance or operation (Including Taxes) in Nebraska	$27,420,906.19
Dividend last declared on shares of Stock, System, Per cent, 20%, Amount	$34,167,380.00
Date, Number and amount of all dividends declared on this stock during the year next preceding the date of this report	Date: March 25, 1921; March 31st, 1921; June 25, 1921; Dec. 27, 1921 Number 4 Amt. $44,925,917.00, Cash 60,000,000.00, Stock

NOTE.—Impossible to answer these two questions at this time as all records of Cost of Additions and Betterments for the year 1921 were destroyed in the General Office Building Fire of March 15th, 1922.

I, H. W. Johnson, Comptroller of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true to the best of my knowledge and belief. (Signed) H. W. Johnson, Comptroller.

Subscribed in my presence and sworn to before me this 7th day of April 1922. (Signed) Henry Lunde, Notary Public. (Seal.)

236 TESTIMONY OF E. F. MORGAN.

E. F. MORGAN, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company was sworn and testified as follows: Am acquainted with the books, records and data of Chicago, Burlington & Quincy Railroad Company from which the foregoing statements were made under my supervision. About one week ago I discovered errors relating to operating expenses in the original statements. This error was caused by a disastrous fire in the general office building the night of March 14 when many of our records were destroyed. About a week or ten days ago I re-examined this report and found a discrepancy of approximately three million dol-

lars, which, investigation developed, grew out of omitting all of the traffic and trainmen expenses; it was just a human error and they had nothing to balance to at that time. I made an amended statement which includes also two other changes. The original statement did not include any proportion of Federal taxes properly assignable to Nebraska nor the amounts paid for joint facilities in the State of Nebraska, nor for our proportion of the net amount paid for rented equipment. As amended the figures shown for net earnings for Nebraska are comparable with that net railway operating income defined in the Act. The amended statement to the State Board of Equalization and Assessment, as testified to by the witness is as follows:

237 Form G.

AMENDED STATEMENT.

Showing Mileage, Capital Stock, Earnings, and Operating Expenses of the Chicago, Burlington & Quincy R. R. Co. for the Year Ending December 31, 1921.

Mileage in Nebraska	2,906.02
Capital Stock	$170,839,100.00
Gross Earnings in Nebraska	41,160,307.23
Passenger	7,818,276.07
Freight	30,044,617.32
Other Sources	3,297,413.04
Operating Expenses for Nebraska including Taxes, Maintenances, Repairs and Renewals, excluding Additions and Betterments	31,289,319.87*
Net earnings in Nebraska	9,870,987.36
Earnings per mile, Gross	14,163.81
Earnings per Mile, Net	3,396.74
Interest on Debt	6,807,134.56
Dividends Made (Cash,	44,925,917.00
Dividends Made (Stock,	60,000,000.00

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy R. R. Co., do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25 day of July A. D., 1922. (Signed) Hazel Nigh, Notary Public. (Seal.)

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*Operating Expenses	$28,209,414.18
Nebraska Taxes	2,207,533.85
U. S. Taxes	654,978.11
Hire of Equipment	125,220.90
Jt. Facility Rents	92,163.83
	$31,289,319.87

238 AMENDED STATEMENT

Showing the Total Gross and Net Earnings of the Chicago, Burlington & Quincy R. R. Co., for the Year Ending March 31, 19—.

Total gross earnings during the year for which made In Nebraska	$41,160,307.22
Total net earnings during the year for which made In Nebraska	9,870,987.36
Total amount expended in operation or maintenance of the property and the improvements thereof	(See note.)
Amount of same expended in improvements or betterments	(See Notes.)
Amount expended in maintenance or operation; including taxes (In Nebraska)	$31,289,319.87
Dividends last declared on shares of stock, system, per cent 20%, Amount	$34,167,380.00

Date, number and amount of all dividends declared on this stock during the year next preceding the date of this report.

Date { March 25, 1921. / March 31, 1921. / June 25, 1921. / Dec. 27, 1921.

Number, 4.

Amt. { $44,925,917.00, Cost. / $60,000,000.00, Stock.

NOTE.—Impossible to answer these questions at this time as all records of cost of additions and betterments for the year 1921 were destroyed in the General Office Building Fire of March 15, 1922.

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, do solemnly swear that the above statement is true to the best of my knowledge and behalf. (Signed) E. F. Morgan, Assistant Auditor.

Subscribed in my presence and sworn to before me this 25th day of July, 1922. (Signed) Hazel Nigh, Notary Public. (Seal.)

239 This witness also identified Exhibit 9 in said bill of exceptions, being the sworn statement of the witness concerning net earnings of the Chicago, Burlington & Quincy Railroad Company for a five-year period ending December 31, 1921 in the State of Nebraska, both inclusive, and exclusive of federal taxes assignable to Nebraska during those years, and the hire of equipment and joint facility rents properly chargeable to Nebraska during that time, as follows:

240 STATEMENT SHOWING NET EARNINGS.

Omaha, Nebraska, July 25th, 1922.

Statements, Form G, sworn to by the Comptroller of this Company have been filed annually with the Auditor of State, State of Nebraska which have shown the "Net Earnings in Nebraska" of the Chicago, Burlington & Quincy Railroad Company for the five year period ended December 31, 1921, as follows:

1917	$9,530,535.46
1918	8,320,696.70
1919	8,578,058.76
1920	3,390,921.92
1921	10,088,381.09

The figures shown above for the years 1917 to 1920 inclusive are the Operating Revenues for each year less the Operating Expenses and State Taxes, with nothing deducted for the proportion of United States Government taxes properly assignable to the State of Nebraska, nor for the Hire of Equipment of Joint Facility Rents. The proportion of United States Government taxes has been deducted in arriving at the figures shown above for the year 1921.

After deducting the Nebraska proportion of United States Government taxes assignable to Nebraska for each of the year- 1917 to 1920 inclusive, and the Hire of Equipment and Joint Facility Rents for all years, the "Net Earnings in Nebraska" for the 5 year period ended December 31, 1921 would be:

1917	$8,559,773.09
1918	7,185,038.62
1919	7,336,922.86
1920	1,960,994.17
1921	9,870,987.36
Average	$6,982,743.00

I, E. F. Morgan, Assistant Auditor of the Chicago, Burlington & Quincy R. R. Company, do solemnly swear that the above statement is true and correct to the best of my knowledge and belief. E. F. Morgan, Assistant Auditor.

STATE OF NEBRASKA,
County of Lancaster:

Subscribed in my presence and sworn to before me this 25th day of July, 1922. Hazel Nigh, Notary Public. (Seal.)

241 The witness continues: One reason why I select the five-year period is that the Bureau of Internal Revenue of the federal government, in an exhibit required in the capital stock tax return, used as a factor in determining the value of the capital stock

of any corporation, require each corporation to show, in a tabulation, the net income for the five years previously and an average of those years.

TESTIMONY OF R. D. POLLARD.

R. D. Pollard was called in the hearing before the State Board of Equalization and Assessment and being sworn testified on behalf of Chicago, Burlington & Quincy Railroad Company; that he is Tax Agent for that company in charge of Nebraska; that he prepared a statement of property owned by the railroad company in Nebraska locally assessed and not within the jurisdiction of the State Board of Equalization and Assessment for assessment purposes, the same being as follows:

"Plattsmouth Shop Buildings	$161,502
Plattsmouth Shop Tools and Machinery	69,700
Havelock Shop Buildings	751,920
Havelock Shop Tools and Machinery	364,515
McCook Tools and Machinery	30,000
Burnham Sheep Yard Buildings	32,754
Feed Horses, Mules, etc., at Burnham	6,465
Furniture in Omaha Headquarters and City Ticket office	10,705
Land and Building Omaha Headquarters	137,000
Total	$1,564,861

On cross examination by Mr. Lamaster for the Board, the witness said: These figures were prepared because under the statutes certain property used in the operation of the road is assessed by the local assessor, for instance, shops and the headquarters at Omaha.

242 TESTIMONY OF A. W. SCRIBNER.

A. W. Scribner, Tax Agent for the Union Pacific System, being duly sworn, testified that the defendant Osborne, State Tax Commissioner, sent the witness a document headed "Formula used by State Board of Equalization in Determining Railroad Values in 1922 in Nebraska". So much of the same as applies to the Chicago, Burlington & Quincy Railroad Company is as follows:

"FORMULA USED BY STATE BOARD OF EQUALIZATION IN DETERMINING RAILROAD VALUES FOR 1922 IN NEBRASKA.

C. B. & Q.

Net Earnings in Nebraska	$13,739,401.04
Assessment for 1921 as fixed by State Board	131,755,725.
6% of which is	7,905,343.50
This deducted from net earnings leaves	5,834,057.54
Added to $131, 755,725 gives	137,589,782.00

Or total assessment for 1922."

The defendant Osborne then stated: "I will say that I have no objection as a member of this Board for the formula going into the record, but the resolution itself adopted by the Board is the best evidence in determining the method employed by the Board in fixing the value of the railroads".

The solicitor for the Chicago, Burlington & Quincy Railroad Company then offered and there was received and read in evidence Exhibit 11, which, so far as it concerns that railroad company, is as follows:

243 EXHIBIT 11 TO SCRIBNER'S TESTIMONY.

Office of the Governor.
Lincoln, Nebraska, June 15th, 1922.

The State Board of Equalization reconvened at the office of the Governor at 10:30 a. m., all members present, the governor in the chair.

The question of railroad values for the year 1922 was then discussed by the Board and the following resolution was unanimously adopted:

Resolved: That we, the State Board of Equalization and Assessment, in regular session held for the purpose of valuing and assessing the railroads in the State of Nebraska, for the purpose of taxation of their property in the said State, and having given due and full consideration to the returns furnished said Board by the several railroad companies, and having taken into consideration the main track, side track, spur track, ware-house tracks, road bed, right of way and depot grounds, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hands, and supplies, monies, credits, franchises, and all other property of said railroad companies, and having taken into consideration the gross and net earnings of the said railroads, the total amount expended in operation and maintenance, the dividends paid, the capital stock of each system or road, and the market value thereof, and the total amount secured and unsecured indebtedness, and from all the information which we are able to obtain do hereby ascertain, appraise, fix and assess for the purpose of general taxation, the full actual value of the property of each of the several systems or companies in the State of Nebraska, as hereinafter recited:

Railroad.	Miles of track.	Total actual valuation.
Chicago Burlington & Quincy	2861.60	$137,589,782.00

244 The witness Scribner recalled before the State board and testifies that he secured data showing lands mortgaged in certain counties of the State of Nebraska and the valuation placed upon the separate tracts of land by the Loan Companies and by the owners; that he first secured lists of mortgages upon lands made by Loan & Trust Companies between March, 1920 and March, 1922; then secured from the Loan Companies making the mortgages a

record of the owners statement as to the value of the mortgaged lands in each instance, and also the appraised value on the same tracts fixed by the Loan Companies, then secured from the county records the assessed valuation for 1921 and 1922 of all of those mortgaged tracts of land; the information thus secured was tabulated into a statement which was introduced in evidence before the State Board of Equalization and Assessment and also introduced on the application for an interlocutory injunction and is hereinbefore identified as C. B. & Q. Exhibit "1". The mortgages were made between March, 1920 and March, 1922. An offer was made to the State Board of Equalization and Assessment and its counsel to submit all of the original data upon which Mr. Scribner's statement was based. The witness was then asked by Mr. Osborne as follows: "Q. The figures that you have here enumerated, Mr. Scribner, are the figures from the loan companies and not from your own personal inspection? A. From the loan companies, yes sir. Q. (By Chairman Amsberry). 245 Did these companies state on what per cent they were loaning? A. They varied somewhat as to that. I think the maximum was 50 per cent, but generally around 40." The witness then continuing in answer to Mr. Clark's questioning: The Loan Companies require mortgagors to file written applications stating the value of the land offered as security. The Loan Companies do not, in the first instance, accept this value but make an independent appraisal. The aggregate total number of acres mortgaged is 369,541, which is perhaps a rather small fraction of the entire acreage in the state but is scattered generally over the state; we included all of the mortgages to Loan Companies so far as we were able to get information with respect to same; as to some of them we could not get the information because it was claimed that the records of the owners' valuation and the appraisement were out of the state, and two companies, the Bankers Life and the Federal Land Bank, refused to give us information.

Exhibit 14 (in bill of exceptions *if* the State Board) is a list of land sales of lands conveyed by warranty deeds in 53 Nebraska counties between March 1, 1921 and October 1, 1922. No deeds were tabulated unless the minimum acreage was forty acres. This exhibit was received in evidence before the State Board and the information thereon is reflected in C. B. & Q. Exhibit "2" produced on the hearing on the application for the interlocutory injunction. Cross examination by Mr. Lamaster for the State Board: Exhibit 13 represents answers from 40 or 41 Loan Companies, the largest doing 246 business in the state; my instructions to parties gathering the information of sales of real estate between March 1, 1921 and October 1, 1922 was to use only what appeared to be, as far as they could see by the record, bona fide sales between those dates. The record does not show whether any of these conveyances were made in pursuance of contracts dated a considerable period before the sale. The great volume of dealing in real estate in Nebraska was during 1918 and 1919. Our people were instructed to look after those sales made during the boom period and consummated by deeds between March 1, 1921 and October 1, 1922 and I assume that they did that.

Parties were instructed to omit all transactions that appeared to be a closing-up of a sale or a re-transfer to the party sold showing that the land was taken back; they would occasionally find a clean-up transaction on the record and these were excluded and they do not appear upon the work sheets.

Mr. Lamaster then introduced in evidence an affidavit of Harry W. Scott, Deputy Tax Commissioner for Nebraska, which is as follows:

247 AFFIDAVIT OF HARRY W. SCOTT.

STATE OF NEBRASKA,
County of Lancaster, ss:

Harry W. Scott, being first duly sworn, on oath says he is deputy tax commissioner of the state of Nebraska and has held such office for more than one year last past; that in connection with the suit of Chicago & North Western Railway Company v. W. H. Osborne, Jr., et al. and the suit of Chicago, St. Paul, Minneapolis & Omaha Railway Company, v. W. H. Osborne, Jr., et al., now pending in the District Court of the United States for the District of Nebraska, this affiant assisted in making a careful study of rural real estate values in a number of counties in Nebraska traversed by the lines of the said plaintiff railway companies; that in Cuming county, Nebraska, affiant assisted in making a particularly careful study of rural real estate values and rural real estate transfers, especially transfers listed in the showings filed by the said companies in said suits; and that in pursuance of said studies affidavits were received from a large number of residents of Cuming county.

A summary of each of the affidavits which show two or more conveyances, or show definite listings for sale, or definite offers indicating value, or giving definite expressions of the owners of such real estate, or of definite expressions of value of those who are qualified to testify as to real estate values in said county, is given below. Conveyances not made in the usual course of business, or made be-
248 tween relatives, or those of small or fractional tracts, are not included herein. Legal descriptions are omitted. Record book and page are stated. All of the affidavits refer to Cuming county land.

Fred Thietje, real estate dealer, states that from June 1 to December 1, 1921, real estate in Cuming county fell at least twenty-five per cent; that in 1919, John Clatanoff was offered $325 per acre for eighty acres and that $125 per acre is the best offer now obtainable. Affidavit dated December 1, 1921.

F. C. Evans, real estate dealer, in that business twenty-seven years, states that since 1919 real estate in Cuming county has depreciated at least fifty per cent; that during the past year he appraised several tracts of land for inheritance tax assessment; that such appraisals ran from $100 to $175 per acre, which he considers a fair value for Cuming county real estate on April 1, 1921. Affidavit dated December 2, 1921.

Paul Kase states that on September 24, 1919, he sold 78 acres for $23,400; that the same was reconveyed (Book 25, page 561) January 21, 1920, as purchaser would not complete transaction; that he is now anxious to sell said real estate for $11,700. Affidavit dated December 2, 1921.

Henry Behrens, banker at Beemer, states that in August, 1919, on behalf of one of his customers he offered to Rudolph Brazda $275 per acre for 390¾ acres, which offer was declined; that the land was sold at public auction in partition action on November 26, 1921, for $147 per acre. Affidavit dated December 1, 1921.

Wm. A. Smith, banker at Beemer, states that on the 14th day of February, 1920, he sold 80 acres for $23,000, sale being made in pursuance of a contract made on December 19, 1919; that on May 14, 1921, his grantee contracted to sell said land for $15,000, or $8,000 less than he (W. A. Smith) received; that said transaction is representative of the general decline in real estate values during the past year. (Book 26 of Deeds, page 308.) Affidavit dated December 1, 1921. .

Henry Gentrup states that one-half section was sold in 1919 for $112,000, only a portion of which was conveyed to the purchaser and that was afterwards reconveyed to the grantor; that on March 21, 1921, he (Henry Gentrup) bought the same land for $80,000; that the land has continued to decrease in price and that if he were now purchasing he would not pay as much for it as when he bought it. (Book 26, pages 697, 698.) Affidavit dated December 3, 1921.

249 John Cerny states that on March 1, 1920, in pursuance of a written contract dated June 18, 1919, he sold 160 acres for $40,820; that on April 1, 1921, the fair market value did not exceed $31,400. (Book 25, page 329.) Affidavit dated December 14, 1921.

Adolph Behrens states that on January 3, 1920, he purchased 80 acres of land in pursuance of a written contract made in June, 1919, for $14,800; that the fair market value thereof on April 1, 1921, was not to exceed seventy per cent of said amount. (Book 25, page 664.) Affidavit dated December 14, 1921.

Rudolph Rhode states that on February 26, 1921, he purchased 80 acres for $18,000; that on April 1, 1921, the fair market value thereof was not to exceed $12,000; that owing to the fact that the land lay directly across the road from his home caused him to pay more than the ordinary purchaser would have paid therefor. (Book 28, page 113.) Affidavit dated December 14, 1921.

Wm. Throener states that in pursuance of a written contract made in July, 1919, he purchased on February 21, 1920, a quarter section of land for $59,280; that the fair market value of said land on April 1, 1921, was not to exceed $35,000. (Book 25, page 592.) Affidavit dated December 14, 1921. .

Richard H. Holsten states that in pursuance of a written contract dated July 2, 1919, he purchased 80 acres on March 1, 1920, for $23,450; that the purchase included other lands and that the purchase price was averaged making the amount above mentioned somewhat too high for the land described in the deed; that the fair market value of the 80 acres mentioned on April 1, 1921, would not exceed

sixty-five per cent of said sum. (Book 25, page 617.) Affidavit dated December 14, 1921.

Richard H. Holsten states that in pursuance of a written contract dated July 2, 1919, he purchased on February 28, 1920, 80 acres for $22,800; that the fair market value of said tract on April 1, 1921, would not exceed sixty-five per cent of the sum named. (Book 25, page 626.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written contract dated July 12, 1919, he purchased on February 28, 1920, 80 acres for $21,060; that on April 1, 1921, the fair market value thereof would not exceed sixty-five per cent of said purchase price. (Book 25, page 628.) Affidavit dated December 14, 1921.

Charles Hrabek states that in pursuance of a written contract dated August 11, 1919, he sold on March 1, 1920, 80 acres of land for $24,048; that on April 1, 1921, the fair market value thereof would not exceed sixty-five per cent of said purchase price. (Book 25, page 629.) Affidavit dated December 14, 1921.

250 Walter Reeson states that on January 1, 1920, he sold 160 acres for $55,407 in pursuance of a written contract dated June 28, 1919; that owing to the fact that the grantee owned adjoining land it induced him to pay considerably more than any other purchaser would have paid; that if said land had been offered for sale during the past year it would not have brought over three-fifths of said purchase price. (Book 26, page 192.) Affidavit dated December 1, 1921. .

Walter Reeson states that in pursuance of a written contract made June 28, 1919, he sold 160 acres of land for $65,593; that owing to the fact that grantee owned land adjoining he was induced to pay considerably more than any other purchaser would have paid; that if said land had been offered for sale during the past year it would have been impossible to receive over three-fifths of the amount of said purchase price. (Book 26, page 193.) Affidavit dated December 1, 1921.

Fred Thietje, real estate dealer, states that he is familiar with the quarter section of land sold by Charles Kappius to Joseph Guenther on March 1, 1920, for a consideration of $63,200; that said Guenther paid $20,000 in cash and gave a mortgage for the balance; that if said land had been offered for sale at any time during the past six months it would not have sold for the amount of the mortgage. (Book 26, page 277.) Affidavit dated December 1, 1921.

Frank L. Boyer states that in pursuance of a written contract dated June 13, 1919, he conveyed to Henry Rolf on February 24, 1920, a quarter section of land for $41,500; that owing to the fact that Rolf had relatives living near said land he was induced to pay more than the ordinary purchaser would have paid; that had he owned said land in March, 1921, or at any time since he could not have received to exceed $28,000 therefor. (Book 26, page 291.) Affidavit dated December 3, 1921.

Fred W. Jarrett states that in pursuance of a written contract dated July 22, 1919, he conveyed on March 1, 1920, a quarter section of land for $26,400; that the purchaser was not able to settle on terms

specified and that said land has so depreciated in value that if he has to take back the land he would not give to exceed therefor more than the sum of $14,284, being the incumbrances on said land. (Book 26, page 334.) Affidavit dated December 1, 1921.

Frank H. Harstick states that in April, 1919, he contracted to purchase 160 acres of land for $20,250; that about three months later he sold the same for $22,500, the conveyances being made in 1920; that if he had not sold the land at the time he did it would have been impossible for him to receive as much as he paid for it at any time during the year 1921. (Book 26, page 424.) (Book 26, page 345.) Affidavit dated December 3, 1921.

251 Fred Thietje states that in pursuance of a written contract dated October 7, 1919, he conveyed on March 1, 1920, 80 acres of land for $32,000; that if said land were to be sold now, or had been sold during the past six months, it would not have brought to exceed $12,000. (Book 26, page 487.) Affidavit dated December 1, 1921.

Albert Bracht states that in pursuance of a written contract made in July, 1919, he purchased on February 20, 1920, 80 acres of land for $20,000; that the fair market value of said land on April 1, 1921, was $14,000. (Book 26, page 263.) Affidavit dated December 14, 1921.

Bernard Hunke states that in pursuance of a written contract made in August, 1919, he purchased 80 acres of land on February 26, 1920; that the fair market value thereof on April 1, 1921, did not exceed $14,000. (Book 26, 375.) Affidavit dated December 14, 1921.

Emil Wegner states that in pursuance of a written contract made in September 1919, he purchased on March 3, 1920, a certain tract of land (acreage not clearly stated) for $44,880; that on April 1, 1921, the fair market value thereof would not exceed $27,200. (Book 26, page 411.) Affidavit dated December 16, 1921.

John K. Erb states that in pursuance of a written contract made in August, 1919, he purchased February 21, 1920, a quarter section of land for $20,800; that if he were to have purchased said land in April, 1921, he would not have paid to exceed $12,000 for it. (Book 26, page 286.) Affidavit dated December 16, 1921.

Hugo M. Nicholson states that in pursuance of a written contract dated August 7, 1919, he sold 80 acres of land for $16,800; that said land did not exceed in value on April 1, 1921, the sum of $10,000. He further says that in his opinion land in Cuming county had on April 1, 1921, decreased in value to the extent of forty to fifty per centum of its value in 1919 and in the spring of 1920. (Book 26, page 398.) Affidavit dated December 13, 1921.

Herman Lemke states that in pursuance of a written contract dated August 7, 1919, he purchased on March 30, 1920, a quarter section of land for $24,000; that the same could not have been sold on April 1, 1921, to exceed $16,000. (Book 26, page 399.) Affidavit dated December 16, 1921.

Herman Lemke states that in pursuance of a written contract made February 7, 1920, on the 30th day of March, 1920, he sold a quarter section of land for $24,800; that the fair market value of said land

on April 1, 1921, did not exceed $16,000. (Book 26, page 400.) Affidavit dated December 16, 1921.

252 Henry W. Peters states that in pursuance of a written contract dated August 8, 1919, he sold on March 22, 1920, 80 acres of land for $16,400, taking back a mortgage for $10,000; that only a part of the interest has been paid thereon during the past year and that if said mortgage be foreclosed the land will not bring any more than the amount of the mortgage. (Book 26, page 408.) Affidavit dated December 16, 1921.

Clarence Galbraith states that in pursuance of a written contract dated March 15, 1919, he purchased on February 26, 1920, 80 acres for $26,000; that he considered $16,000 as a fair market value of said land at the present time. (Book 26, page 254.) Affidavit dated December 2, 1921.

J. H. Emley states that in pursuance of a written contract dated September 30, 1919, he sold on February 28, 1920, 240 acres of land for $78,000; that there are now mortgages on said land for $40,000 and that he would not give to exceed the amount of the mortgages for the land; that the land was not worth any more on April 1, 1921, than at the present time. (Book 26, pages 288-289.) Affidavit dated December 2, 1921.

Clarence Galbraith states that in pursuance of a written contract dated November 14, 1919, he purchased from W. A. Smith on February 14, 1920, a quarter section of land for $48,000; that he considers $28,800 to be the fair market value of said land at the present time. (Book 26, page 307.) Affidavit dated December 2, 1921.

Wm. A. Smith states that on March 1, 1920, Andrew R. Olson conveyed 80 acres of land for $26,000. (Deed in Book 26, page 323); that he is authorized by the grantee, the present owner, to sell the same for $16,000, or for $10,000 less than the price paid. (Book 26, page 333.) Affidavit dated December 2, 1921.

A. R. Oleson states that in pursuance of a written contract dated August, 1919, he sold on March 1, 1920, 80 acres of land for $26,000; that on April 1, 1921, he believed it could have been sold for $225 per acre but that at this time it was doubtful whether it could be sold for over $200 per acre. (Book 26, page 323.) Affidavit dated December 13, 1921.

Ben Martin states that in pursuance of a written contract made in August, 1919, he sold a quarter section of land for $60,000; that on April 1, 1921, the same could not have been sold for more than $40,000. (Book 26, page 366.) Affidavit dated December 13, 1921.

O. H. Wegner states that in pursuance to a written contract made May 29, 1919, he sold on February 26, 1920, 80 acres of land for $18,800; that the fair market value thereof on April 1, 1921, did not exceed $14,000. (Book 26, page 305.) Affidavit dated December 16, 1921.

253 John F. Jurgenson states that in pursuance of a written contract made in August, 1919, he purchased on February 28, 1920, a quarter section for $42,400; that the fair market value

thereof on April 1, 1921, did not exceed $32,000. (Book 26, page 311.) Affidavit dated December 16, 1921.

John B. Wingert states that in pursuance of a written contract made in July, 1919, he sold in February, 1920, 80 acres of land for $25,408.50; that the fair market value thereof on April 1, 1921, would not exceed $200 per acre. (Book 25, page 603.) Affidavit dated December 15, 1921.

Geo. W. Breitharth states that in pursuance of a written contract dated July 7, 1919, he purchased a quarter section for $42,300; that he was unable to meet his payments thereon and turned the same over to his father; that although he had placed numerous improvements on said land he considers that its fair market value on April 1, 1919, to be approximately $18,000. (Book 25, page 615.) Affidavit dated December 15, 1921.

Joseph Leimer states that in pursuance of a written contract made in July, 1919, he purchased on March 1, 1920, a quarter section for $53,600; that the fair market value thereof on April 1, 1921, would not exceed $33,000. (Book 26, page 297.) Affidavit dated December 15, 1921.

Ernest F. Beckmann states that in pursuance of a written contract made in June, 1919, he purchased on February 17, 1920, 80 acres of land for $24,000; that owing to its situation he paid more therefor than the ordinary purchaser would have paid; that the land has depreciated in value not less than thirty-five per cent since the date of the agreement. (Book 28, page 7.) Affidavit dated December 15, 1921.

O. L. Nelson states that in pursuance of a written contract dated June 21, 1919, he sold on February 19, 1920, 80 acres of land for $36,349; that on or about September 1, 1921, he re-purchased said land from his grantee for the sum of $24,000. (Book 26, page 376.) Affidavit dated December 5, 1921.

Jerome K. Brazda states that Andrew Oleson, on March 1, 1920, sold 80 acres of land for $26,000 (Deed recorded in Book 26, page 323); that thereafter on November 25, 1921, he purchased said 80 acres for $14,800 (Deed recorded in Book 27, page 104); he says that the general depreciation in the fair market value between the 1st day of March, 1920, and November, 1921, is about the same proportion as the depreciation in value of the said 80 acres. Affidavit dated January 6, 1922.

Joseph W. Kellinghaus states that in pursuance of a written contract he purchased on February 26, 1920, a quarter section
254 for $58,400; that the fair market value of the same on April 1, 1921, would not exceed $36,000. (Book 25, page 651.) Affidavit dated December 31, 1921.

Joseph S. Uhing states that in pursuance of a written contract made in September, 1919, he purchased on February 28, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1919, would not exceed $13,000. (Book 26, page 268.) Affidavit dated December 31, 1921.

N. P. Hansen states that in pursuance of a written contract made in May, 1919, he sold, February 25, 1920, a quarter section for

$36,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 249.) Affidavit dated December 30, 1921.

Oscar F. Hultquist states that in pursuance of a written contract made in June, 1919, he purchased on February 26, 1920, 200 acres for $60,000; that the fair market value of the above real estate on April 1, 1921, would not exceed $30,000. (Book 26, page 346.) Affidavit dated December 29, 1921.

William B. Ockander states that in pursuance of a written contract made in July, 1919, he purchased on January 19, 1920, 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 25, page 633.) Affidavit dated December 29, 1921.

Ludwig Otterstein states that on March 1, 1920, he sold a quarter section of land for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $18,000. (Book 26, page 276.) Affidavit dated December 30, 1921.

Ida Zuhlke states that in pursuance of a written contract made in August, 1919, she sold on March 1, 1920, a quarter section of land for $39,000; that the fair market value of the same on April 1, 1921, would not exceed $18,000. (Book 26, page 275.) Affidavit dated December 30, 1921.

O. C. Anderson states that on July 7, 1920, as referee, he sold 80 acres of land for $28,440; that the fair market value of the same on April 1, 1921, would not exceed $16,000. (Book 28, page 92.) Affidavit dated December 30, 1921.

H. L. Morse states that in pursuance of a written contract dated May 17, 1919, he purchased on February 26, 1920, a quarter section for $48,000; that the fair market value thereof on April 1, 1921 would not exceed $24,000. (Book 25, page 604.) Affidavit dated December 29, 1921.

Andrew C. Johnson states that in pursuance of a contract made in December, 1920, he purchased on June 1, 1921, 82 acres for $14,602; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 28, page 150.) Affidavit dated
255 December 29, 1921.

Emil Zuhlke states that in pursuance of a written contract made in December, 1919, on February 10, 1920, he sold to Philip Graff 80 acres of land for $21,200; that the fair market value thereof on April 1, 1921, would not exceed $11,000. (Book 26, page 303.) Affidavit dated December 29, 1921.

Joseph Herzinger states that in pursuance of a written contract made in November, 1919, he sold to Alfred Miller a quarter section of land on March 1, 1920, for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 26, page 369.) Affidavit dated December 28, 1921.

Emil Wegner states that in pursuance of a written contract made in August, 1919, he sold on March 31, 1920, 120 acres of land for $50,000; that the fair market value thereof on April 1, 1921, would not exceed $30,000. (Book 26, page 413.) Affidavit dated December 28, 1921.

Gerhard Schweers states that in pursuance of a written contract dated January 24, 1920, he sold on January 30, 1920, a quarter section of land for $54,000; that the fair market value thereof on April 1, 1921, would not exceed $27,000. (Book 26, page 426.) Affidavit dated December 28, 1921.

Michael Kerler states that in pursuance of a written contract made in June, 1919, he sold on March 1, 1920, 80 acres of land for $28,000; that the fair market value thereof on April 1, 1921, would not exceed $14,000. (Book 25, page 365.) Affidavit dated December 22, 1921.

J. F. Zajicek states that he is cashier of the Nebraska State Bank at West Point and Secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale of a quarter section of land by John Elsinger (Deed recorded in Book 26, page 278) in pursuance of a written contract entered into during the fall of 1919; that on September 24, 1921, the grantee applied for a loan and said land was appraised by the West Point National Farm Loan Association on September 26, 1921, for $12,000; that thereafter an examination was made for the Federal Land Bank and its examiner reduced the valuation to $11,200; that if he were to have purchased said land on April 1, 1921, he would not have given to exceed $12,000. Affidavit dated December 20, 1921.

Chas. W. Johnson states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, 160 acres of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $44,000. (Book 25, page 643.) Affidavit dated December 22, 1921.

Adolph English states that in pursuance of a written con-
256 tract made March 19, 1919, he purchased a quarter section for $36,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 255.) Affidavit dated December 21, 1921.

W. E. Webb states that in pursuance of a written contract made on April 26, 1919, he purchased on March 27, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $25,000. (Book 26, page 406.) Affidavit dated December 21, 1921.

Ferd Schlecht states that in pursuance of a written contract made in January, 1920, he purchased on the 26th day of January, 1920, 80 acres of land for $26,000; that the fair market value thereof on April 1, 1921, would not exceed $13,000. (Book 26, page 273.) Affidavit dated December 21, 1921.

Joseph Neiman states that in pursuance of a written contract dated July 9, 1919, he purchased on March 1, 1920, 80 acres of land for $33,600; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 352.) Affidavit dated December 21, 1921.

George Konopik states that in pursuance of a written contract made in January, 1920, he purchased on February 14, 1920, 80 acres of land for $22,000; that the same joins land already owned by him which induced him to pay more than the ordinary purchaser

would have paid; that the fair market value thereof on April 1, 1921, would not exceed $12,000. (Book 26, page 420.) Affidavit dated December 21, 1921.

J. F. Zajicek states that he is cashier of the Nebraska State Bank at West Point and secretary-treasurer of the West Point National Farm Loan Association; that he knows of the sale by William Neary of the quarter section of land for $20,000 (Deed recorded in Book 26, page 671), said conveyance being made in pursuance of a written contract made in the summer of 1920; that on April 1, 1921, the fair market value of said land would not exceed $7,000. Affidavit dated December 20, 1921.

W. F. Bolt states that in pursuance of a written contract made in September, 1919, he purchased on February 25, 1920, a quarter section for $56,000; that the fair market value of the same on April 1, 1921, would not exceed $24,000. (Book 26, page 298.) Affidavit dated December 21, 1921.

William H. Fillmer states that in pursuance of a written contract made in July, 1919, he purchased on February 26, 1920, 100 acres of land for $42,000; that the fair market value thereof on April 1, 1921, would not exceed $21,000. (Book 26, page 253.) Affidavit dated December 21, 1921.

257 Percy Nellar states that in pursuance of a written contract made in September, 1919, he purchased on February 26, 1920, a quarter section of land for $53,200; that the fair market value of the same on April 1, 1921, would not exceed $32,000. (Book 26, page 436). Affidavit dated December 21, 1921.

John Ahrens states that in pursuance of a written contract made in July, 1919, he purchased on February 27, 1920, a quarter section of land for $56,000; that the fair market value thereof on April 1, 1921, would not exceed $28,000. (Book 26, page 331.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in August, 1919, he purchased on February 27, 1920, a quarter section of land for $48,000; that the fair market value thereof on April 1, 1921, would not exceed $40,000. (Book 25, page 590.) Affidavit dated December 22, 1921.

Carl Steinbaugh states that in pursuance of a written contract made in May, 1919, he purchased on February 21, 1920, a quarter section of land for $42,400; that the fair market value thereof on April 1, 1921, would not exceed $38,500. (Book 25, page 589.) Affidavit December 22, 1921.

John Jahnke states that in pursuance of a written contract made in July, 1919, he purchased on February 25, 1920, a quarter section of land for $52,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 284.) Affidavit dated December 22, 1921.

John Doffin states that in pursuance of a written contract made in May, 1919, he purchased on March 1, 1920, a quarter section of land for $15,200; that the fair market value thereof on April 1, 1921, would not exceed $8,000. (Book 26, page 351.) Affidavit dated December 21, 1921.

Charles Jugel states that in pursuance of a written contract made May 31, 1919, he sold on March 1, 1920, 80 acres of land for $24,000; that the fair market value thereof on April 1, 1921, would not exceed $16,000. (Book 26, page 296.) Affidavit dated December 21, 1921.

Marcus Peterson states that in pursuance of a written contract made in March, 1919, he sold on March 1, 1920, 80 acres of land for $16,195; that the fair market value thereof on April 1, 1921, would not exceed $150 per acre. (Book 26, page 282.) Affidavit dated December 20, 1921.

John Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 16, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921 would not exceed $10,000. (Book 25, page 600.) Affidavit dated December 20, 1921.

258 Henry F. Pribnow states that in pursuance of a written contract made in June, 1919, he purchased on February 16, 1920, 80 acres of land for $14,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 25, page 601.) Affidavit dated December 20, 1921.

Alfred Anderson states that in pursuance of a written contract made March 30, 1920, he purchased on March 1, 1921, a quarter section of land for $54,230; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 28, page 112.) Affidavit dated December 20, 1921.

John Henry Witte states that in pursuance of a written contract made in September, 1919, he purchased on February 27, 1920, a quarter section for $55,200; that the fair market value thereof on April 1, 1921, would not exceed $32,000. (Book 25, page 626.) Affidavit dated December 20, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he purchased on March 1, 1920, 200 acres of land for $57,280; that the fair market value thereof on April 1, 1921, would not exceed $35,000. (Book 26, page 373.) Affidavit dated December 19, 1921.

Carl Spering states that in pursuance of a written contract made in August, 1919, he sold on March 1, 1920, 80 acres of land for $20,000; that the fair market value thereof on April 1, 1921, would not exceed $10,000. (Book 26, page 333.) Affidavit December 19, 1921.

Robt. Roggenbach states that in pursuance of a written contract made in October, 1919, he purchased on March 3, 1920, a quarter section of land, for $40,920, purchasing it for one of his sons and probably paying more than the ordinary purchaser would have paid; that the fair market value thereof on April 1, 1921, would not exceed $21,000; (Book 25, page 658). Affidavit dated December 19, 1921.

O. E. Bishop states that in pursuance of a written contract made in November, 1919, he purchased on February 17, 1920, 80 acres of land for $27,000; that the fair market value thereof on April 1,

1921, would not exceed $16,000. (Book 26, page 285.) Affidavit dated December 19, 1921.

H. W. Faubel states that in pursuance of a written contract dated April 11, 1919, he sold on April 1, 1920, a quarter section of land for $45,000; that the fair market value thereof on April 1, 1921, would not exceed $24,000. (Book 26, page 418.) Affidavit dated December 19, 1921.

Archie M. Ford states that in pursuance of a written contract made in December, 1919, he sold on February 27, 1920, 80 acres of land for $22,000; that the fair market value thereof on
230 April 1, 1921, would not exceed $16,000. (Book 25, page 598.) Affidavit dated December 22, 1921.

J. C. Elliott states that he was county attorney of Cuming county; that during the year 1921, he participated in eight hearings for the purpose of appraising estates to determine the amount of inheritance tax therefrom; that during the year 1921 the results of such hearings and appraisements were as follows:

2 tracts	$325	per acre.
1 "	200	" "
2 "	190	" "
1 "	180	" "
6 "	175	" "
1 "	150	" "
1 "	125	" "
1 "	100	" "

that many of the lands thus appraised were readily salable in 1918 and 1919 from $350 to $400 per acre.

Affiant further says that all of the affidavits mentioned above are now available for inspection by any of the parties interested in this hearing. Harry W. Scott.

Subscribed and sworn to before me this 25th day of July, 1922. D. M. Amsberry, Secretary of State. (Seal.)

240 Thereupon Mr. Clark, for the railroad companies, offered the Board and its counsel, Mr. Lamaster, to produce the field men who collected all of the data from the different counties covering sales and mortgages as hereinbefore set forth, to the end that they might be cross-examined. Whereupon Mr. Lamaster stated, in substance, that he did not question the accuracy of the figures but was inclined to believe that the the transfers included the consummation of deals initiated when financial conditions were better. Mr. Osborne, of the State Board, then stated: "I do not doubt but what that is true, and a correct copy of those records." Thereupon the following colloquy occurred:

"Mr. Clark: Now, Mr. Secretary, in my petition I ask that the Counties be notified to be here at this hearing and that their valuations be raised. Was there any notice sent to them as to that?

Mr. Osborne: I want this to go in the record: They are cited to appear here next Monday.

Mr. Clark: Was there any notice sent out to them of this complaint?

261 Mr. Osborne: No sir, because the abstracts are not all in.

Mr. Dressler: Do I understand the Counties have been notified to appear sometime?

Mr. Osborne: Yes.

Mr. Clark: When is that hearing to be?

Mr. Osborne: Next Monday.

Mr. Clark: Does that apply as to all the counties in the State or part of them?

Mr. Osborne: Applies to what is here.

Mr. Clark: Now, may I ask the Board and the Tax Commissioner not to certify the results of your equalization as to these complaints or any other to the County Clerks until after the Complainants have time to look at your decision and determine their course.

Mr. Osborne: They have already been certified, Mr. Clark.

Mr. Clark: Won't you issue another certificate?

Mr. Osborne: You mean the values of this road?

Mr. Clark: I am speaking now of your certificates you send out of your equalization results as provided by statute.

Mr. Osborne: No, not yet.

Mr. Clark: May I ask that you not certify them out until after your final decision and we decide what course we wish to pursue.

262 Mr. Osborne: How long a time do you want?

Mr. Clark: The statute gives us ten days. We will get at it as soon as we learn your decision.

Mr. Osborne: You desire ten days then?

Mr. Clark: I do not want it certified out until we decide what course we will take.

Mr. Osborne: You mean ten days after the levy is made?

Mr. Clark: No.

Mr. Dressler: Ten days after you announce your decision.

Mr. Clark: The statute provides you shall certify the results of these hearings out to the County Clerks.

Mr. Lamaster: Are you through with Mr. Scribner?

Mr. Magaw: Yes."

Whereupon Mr. Lamaster, for the State Board of Equalization and Assessment, introduced before the Board its Exhibit "18" in the words and figures following:

Final Assessment for 1922.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Adams	$71.83	none	$71.83	$49,901,860
Antelope	48.78	none	48.78	37,590,849
Banner	6.20	#14%	7.06	3,835,087
Blaine	4.79	—3%	4.65	3,727,270
Boone	71.10	none	71.10	43,420,985
Box Butte	9.03	none	9.03	15,181,545
Boyd	42.06	#3%	43.32	19,245,096
Brown	8.00	#5%	8.40	10,602,342
Buffalo	41.95	#10%	46.14	52,088,040
Burt	119.87	—2%	117.47	44,952,913
Butler	96.69	none	96.69	50,457,625
Cass	111.46	none	111.46	56,528,300
Cedar	83.35	#13%	94.18	58,662,732
Chase	12.27	none	12.27	9,836,036
Cherry	4.57	#8%	4.93	30,896,766
Cheyenne	22.86	none	22.86	30,709,890
Clay	77.74	none	77.74	42,203,432
Colfax	112.77	none	112.77	41,169,435
Cuming	110.40	#9%	120.33	56,039,548
Custer	19.67	#4%	20.45	50,027,640
Dakota	97.56	—2%	96.51	23,266,286
Dawes	10.31	none	10.31	19,702,486

Final Assessment for 1922.—Continued.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Dawson	38.27	#5%	40.94	42,795,009
Deuel	25.06	none	25.06	12,941,116
Dixon	66.34	#21%	80.27	32,390,709
Dodge	118.73	none	118.73	64,324,160
Douglas	144.64	none	144.64	355,166,756
Dundy	9.88	#6%	10.47	12,228,429
Fillmore	85.31	none	85.31	44,906,463
Franklin	38.39	none	38.39	21,250,325
Frontier	16.69	none	16.69	15,759,423
Furnas	30.87	—4%	29.63	26,066,615
Gage	80.19	none	80.19	71,709,425
Garden	8.39	#10%	9.22	13,321,038
Garfield	10.60	#15%	12.10	6,190,020
Gosper	28.86	none	28.86	11,861,105
Grant	3.82	none	3.82	5,865,784
Greeley	36.07	#4%	37.51	19,891,378
Hall	57.91	#6%	61.38	46,134,847
Hamilton	86.73	none	86.73	43,103,785
Harlan	32.06	none	32.06	20,328,430
Hayes	10.46	#20%	12.55	7,114,146
Hitchcock	18.48	none	18.48	14,954,973
Holt	13.93	#10%	15.32	32,564,618
Hooker	3.70	none	3.70	4,267,327
Howard	45.58	none	45.58	25,913,982

	Jefferson	74.59	—6%	70.11	42,269,034
264	Johnson	89.03	—4%	85.46	28,494,410
	Kearney	50.47	none	50.47	24,982,895
Keith		12.53	none	12.53	17,233,192
Keva Paha		9.58	none	9.58	6,015,425
Kimball		17.37	none	17.37	18,742,915
Knox		48.24	#5%	50.65	46,900,444
Lancaster		101.22	none	101.22	170,339,640
Lincoln		38.47	#19%	10.07	34,902,404
Logan		8.24	none	8.24	4,886,332
Loup		6.02	#10%	6.62	3,026,587
Madison		86.23	none	86.23	53,009,645
McPherson		3.52	none	3.52	2,421,750
Merrick		64.79	—4%	62.19	31,105,099
Morrill		10.10	none	10.10	16,740,085
Nance		62.65	#4%	65.15	25,272,925
Nemaha		94.88	none	94.88	33,899,810
Nuckolls		59.52	none	59.52	34,125,865
Otoe		100.09	#4%	104.09	57,949,892
Pawnee		69.23	none	69.23	27,998,786
Perkins		15.23	#6%	16.14	13,574,352
Phelps		49.45	none	49.45	27,009,000
Pierce		58.96	#20%	70.75	35,633,674
Platte		98.45	none	98.45	61,702,285
Polk		97.41	none	97.41	35,854,434
Red Willow		22.27	—4%	21.37	20,315,977
Richardson		90.15	#2%	91.95	46,134,559
Rock		8.22	none	8.22	7,761,035
Saline		93.57	none	93.57	51,087,759

Final Assessment for 1922.—Continued.

Counties.	Per acre abst. ave.	% increase or decrease of rural real estate.	Ave. per acre as equalized.	Grand total value as equalized.
Sarpy	107.68	—3%	104.44	27,043,608
Saunders	104.07	none	104.07	69,510,311
Scotts Bluff:	Abstract not received.		Estimated total	31,000,000
Seward	94.30	none	94.30	47,995,150
Sheridan	7.15	none	7.15	20,389,645
Sherman	35.13	none	35.13	19,723,939
Sioux	6.42	none	6.42	12,190,880
Stanton	88.42	#5%	92.84	31,878,341
Thayer	62.57	none	62.57	35,026,775
Thomas	3.85	—15%	3.27	3,776,531
Thurston	91.52	none	91.52	25,875,008
Valley	38.94	none	38.94	22,269,230
Washington	119.07	#4%	123.83	40,093,005
Wayne	105.85	none	105.85	39,353,980
Webster	44.65	none	44.65	25,806,245
Wheeler	12.10	none	12.10	5,433,420
York	92.17	none	92.17	50,388,755
Arthur	4.23	none	4.23	2,597,065
Total				$3,190,838,127

Compiled by W. H. Osborne, State Tax Commissioner; H. W. Scott, Deputy Tax Commissioner.

265 TESTIMONY OF E. F. MORGAN.

The witness Morgan, Assistant Auditor of the Chicago, Burlington & Quincy Railroad Company, was recalled and further cross-examined by Mr. Lamaster: $19,595,025.26 of the cash dividends of $44,925,917.00 were paid out of current income of 1921 and the remainder of the cash dividend paid out of surplus. The first dividend in 1921 was two per cent. on capital stock of $110,839,100.00. Another dividend of five per cent. on $170,000,000.00 capital stock. Another dividend of five per cent. on $170,000,000.00 and fifteen per cent. on $170,000,000.00. In 1921 $6,014,948.11 was transfer-ed to profit and loss. Operating expenses include taxes, maintenance, repairs and renewals, but exclude additions and betterments. We absolutely follow the Interstate Commerce Commission's accounting rules in arriving at this figure. I include Nebraska taxes $2,207,533.85 and United States taxes $654,978.11. The Interstate Commerce Commission rules provide that all taxes, state, municipal and federal, are chargeable to railway tax accruals. $63,209.49 is federal capital stock tax, and $591,768.61 income tax. All taxes except assessments for public improvements are deductible from income.

Mr. Clark then offered the final order and judgment of the State Board of Equalization and Assessment for the taxes for 1922. This order was subsequently made on the 2nd day of August, 1922.

266 Mr. Clark, at the close of the testimony adduced before the State Board of Equalization and Assessment for 1922, made the following request:

"Mr. Clark: I now want to ask the Board not to certify out under Section 4 of Article 11, under the Revenue Law, the result of these equalization hearings until the Complainants have had time to examine the final judgment entered in this case and determine the course to pursue. Within the ten days allowed by statute.

Mr. Lamaster: I suppose that is up to the Board, but I am satisfied they will give you that time.

The Chairman: Yes, if that is the requirement of the law. This hearing will now stand adjourned, subject to the call of the Board."

The order of the State Board of Equalization and Assessment made on the 2nd day of August, 1922, dismissing the complaints of the railroad companies, including the Chicago, Burlington & Quincy Railroad Company, is in the following language:

ORDER OF STATE BOARD DISMISSING COMPLAINTS.

"Whereas the Union Pacific Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Chicago and North Western Railroad Company, and the St. Joe & Grand Island Railroad Company, have filed a complaint with this Board, wherein they complain against the valuation heretofore fixed by this Board

267 upon their property:

And whereas on the 25th day of July a full hearing was granted said railroads as requested in said complaints:

And whereas this Board has cited before it approximately 35 counties to show cause why the real estate of such counties should not be increased:

And whereas after a full hearing the Board entered a final order increasing by a percentum the real estate of 28 counties, and decreasing 11 counties, and making no change in 55 counties:

Therefore be it resolved that the complaints of each of the complaining railroad companies, and the requests therein made, be dismissed.

Upon motion the resolution was unanimously adopted.

Dated August 2, 1922."

The State, nor the State Board of Equalization and Assessment adduced no evidence on the hearing of the complaints of the railroad companies other than the affidavit of Deputy Tax Commissioner Scott and the final assessment for 1922 and the tabulation of the final assessment for 1922 compiled by W. H. Osborne, Jr., Tax Commissioner, and H. W. Scott, Deputy Tax Commissioner, hereinbefore set out in full.

268 SUMMARY OF C., B. & Q. EXHIBIT 8.

On the hearing before the three Judges the plaintiff introduced and there was received and read in evidence C. B. & Q. Exhibit "8," being an affidavit of Pollock Parmele, revealing that affiant had checked and analyzed the affidavit of Harry W. Scott, Deputy Tax Commissioner, with respect to sales in Cuming County, Nebraska.

Affiant, amongst other things, stated that he secured from the County Assessors' records of Cuming County, Nebraska, the 1920, 1921 and 1922 tax assessments against every piece of real estate referred to in Scott's affidavit. The correct assessments of that real estate, with the consideration and description, are shown in a three page statement made by the affiant and attached to the affidavit; that affiant prepared a correct tabulation showing a comparison of the assessments, sale consideration, estimate of value and acreage of the tracts of land referred to in the Scott affidavit and the same is as follows:

"Cuming County, Nebraska.

Number of transfers or sales	84
Number of acres sold	10,968
Consideration as shown by deeds	$3,085,072
Average sale price per acre	$281
Market value in 1921	1,863,452
Average value per acre	$169
Assessed value same land 1920	1,535,500
Average assessed value per acre 1920	$140
Assessed value same land 1921	1,337,380
Average assessed value per acre 1921	$122
Assessed value same land 1922	1,276,980
Average assessed value per acre 1922	$116
Per cent of 1920 assessment to sale value	49.7%
" " " 1921 " " " "	43.3%
" " " 1922 " " " "	41.3%
Per cent of 1920 assessment to value by state 1921	82.4%
" " " 1921 " " " " " 1921	71.7%
" " " 1922 " " " " " 1921	68.5%"

239 The defendants, to maintain the issues on their part, offered and there was received in evidence the following, to-wit:

DEFENDANTS' EXHIBIT 1.

Affidavit of U. G. Powell, identified as Defendants' Exhibit "1," to which counsel for the Chicago, Burlington & Quincy Railroad Company objected for the reason that the State Board of Equalization should not be permitted, in that manner, to impeach their own official acts.

"Judge Lewis: We think it is competent as an admission aside from the question of what weight should be attached to it."

Which said Defendants' Exhibit "1" is as follows:

"*I*, Ulyses G. Powell, after being duly sworn deposes and says:

1. That his residence is Lincoln, Nebraska; that he is an accountant of more than thirty years' experience. That he was for more than twelve years chief accountant for the Nebraska State Railway Commission; that as chief accountant he had direct charge over the annual Reports filed with the Commission by the plaintiff.

2. That he has investigated the Report filed with the Commission by the Engineering Department of the Commission, which shows the plaintiff's valuation of the Company's property as of July 1st, 1909 and reported by the Department to the Commission.

3. That the total value of plaintiff's railroad in the State of Nebraska as of July 1st, 1909 exclusive of equipment and material and supplies was $182,076,114.60.

270 That he has read the affidavit of Mr. E. F. Morgan introduced in these proceedings and finds that the additions and betterments to plaintiff's railroad and structure facilities located in

the State of Nebraska from July 1st, 1913 to December 31st, 1921 is shown by said affidavit to be $10,388,405.11; that he has estimated the expenditures for additions and betterments to plaintiff's property from July 1st, 1909 to July 1st, 1913, both included on the same ratio of expenditures as was put in place from July 1st, 1913 to December 31st, 1921, and found the sum to be in round figures $4,000,000.00.

5. That he has read the Annual Report of plaintiff company to its stockholders as of December 31st, 1921, and from said report finds that the book cost of the rolling stock owned by plaintiff company as of December 31st, 1921 is shown to be $101,562,975.45; that he has pro rated the book cost of the rolling stock to the State of Nebraska on the following bases and finds the percentage and sums to be the same as shown below:

Equipment Apportioned to Nebraska.

On Car Mileage Basis (20.89%)	$21,216,505.56
On Miles Operated (30.57%)	31,047,801.58
On Lines Owned (31.76%)	32,256,400.99

6. That he has calculated the working assets that the plaintiff company would normally require for the transaction of its business in the State of Nebraska, would be 5% of the total value of the road and equipment as mentioned in this affidavit.

271 7. That the investigation made by your affiant as mentioned in this affidavit, results in a total valuation of plaintiff's steam railroad property located in the State of Nebraska as of December 31st, 1921, calculated on the several bases herein mentioned results in the following amounts:

Equipment	Apportioned on	Car Mileage basis	$228,565,076.53
"	"	Miles operated "	238,887,937.35
"	"	Lines Owned "	240,156,966.73

Further affiant sayeth not."

"Judge Woodrough: Well, that situation is not very different from the situation presented to me in the trial on the merits (referring to Chicago & Northwestern 1921 case) and then I took up that affidavit that seemed to me that there wasn't enough of the report reflected so that I could be sure that that is what the railroad company did actually report, or how they reported it or how much of it was really a declaration by the railroad company."

* * * * * * *

"Mr. Lamaster: We will offer in connection with Mr. Powell's affidavit page 472 of the Fourth Annual Report of Nebraska State Railway Commission, being Defendants' Exhibit 3. This shows the valuation for 1909 of the C. B. & Q. Company property. These are entitled "Respondent's Valuations.' This shows a total valua-

tion after taking the several items, right of way, and station
272 grounds, real estate, grading, and so forth, shows $200,624,-576.79. Now this is for the Burlington for that year. Mr. Powell has taken that figure and supplemented it with the additions and betterments as reported annually to the State Railway Commission. It seems to me that the affidavit would not mean that it was his own estimate. However, if it is not clear in that regard we want to change it before it is submitted to the Court, to make it correctly state the facts. He does not in any way claim responsibility for those figures except to say that they are taken from the annual report."

Said report being in the words and figures as follows:

273 DEFENDANT'S EXHIBIT 3.

Physical Value for July 1, 1909, of Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850.34. Miles of Track, 3,478.96.

Subject.	Respondent's valuation repro. new.
1. Right of Way and Station Grounds	$25,177,999.71
2. Real Estate	292,985.12
3. Grading	21,196,163.23
4. Tunnels	64,225.88
5. Bridges, Trestles & Culverts	7,729,268.21
6. Ties	6,190,856.52
7. Rails	10,135,371.60
8. Frogs and Switches	332,174.98
9. Track Fastenings and other Material	1,931,202.33
10. Ballast	4,077,295.65
11. Track Laying and Surfacing	4,333,545.73
12. Roadway Tools	64,059.05
13. Fencing—Right of Way	761,136.49
14. Crossings & Signs	460,331.76
15. Interlocking and other Signal Apparatus	150,275.35
16. Telegraph and Telephone Lines	687,410.04
17. Station Bldgs. and Fixtures	1,813,949.32
18. General Office Bldgs. and Fixtures	144,735.63
19. Shops, Engine Houses and Turntables	1,287,573.62
20. Shop Machinery and Tools	482,459.35
21. Water Stations	764,970.17
22. Fuel Stations	254,395.32
23. Grain Elevators	10,000.00
26. Electric Light Plants	151,332.00
30. Miscellaneous Structures	1,152,332.47
31. Adaptation and Solidification of Roadway	7,354,507.08

Subject.	Respondent's valuation repro. new.
32. Engineering and Superintendence	3,882,640.31
33. Steam Locomotives	4,670,050.00
35. Passenger Cars	2,150,998.63
36. Freight Cars	8,589,101.80
37. Work and Misc. Equip.	462,340.00
38. Rent and repairs of Equip. during Const.	953,525.56
39. Inspection and Purchase of Equip.	158,724.90
40. Transportation of Men and Material	13,522,037.69
41. Stores and Supplies for Nebraska	1,563,721.30
42. General Expenditures—Contingencies	67,670,879.99
Grand Total	$200,624,576.79

NOTE.—Railroad report of total mileage does not check with the mileage found by the department and so reported. Using above mileage, total value per mile of roadway equals $70,386.19, per mile of track equals $57,667.97.

274 The defendants offered and there was received and read in evidence, defendant's Exhibit 7, being the affidavit of U. G. Powell, as follows:

DEFENDANT'S EXHIBIT 7.

"Ulysses G. Powell being first duly sworn, deposes and says, that he is the same Ulysses G. Powell who has submitted affidavits in these proceedings. He further says as follows:

1. That he is familiar with the unit costs of material and labor used by steam railroads that operated lines of road in the State of Nebraska during the past ten years.

2. That the average cost of material used in the construction of roadway and equipment facilities in the State of Nebraska, for the year 1921 was between 155 and 165 per cent of costs of similar material in 1913.

3. That the plaintiff company paid $30.35 per gross ton for new open hearth 90 lb. per yard steel rails laid by plaintiff on its system of railroads in the state of Nebraska during the year 1911. That the plaintiff company paid $48.00 per gross ton for the same class and weight of rail laid in Nebraska during the year 1921.

4. That the plaintiff company paid for ties used in operation and construction of its railroad in the state of Nebraska during the years 1911 and 1921 as follows:

	1911.	1921.
275 New oak ties untreated	$.61	$1.47
New pine ties treated	.77	1.47

Ulysses G. Powell."

276 DEFENDANT'S EXHIBIT A.

The defendants offered their Exhibit "9", being testimony given by Mr. Don L. Love, one of the Directors of the Lincoln Joint Stock Land Bank, adduced by the defendants during the trial on the merits of the 1921 tax suit of the Chicago & Northwestern Railway Co., in substance as follows: Am one of the directors and the treasurer of the Lincoln Joint Stock Land Bank since 1918 when it was organized; have been connected with the Lincoln Trust Company for ten years prior thereto; the Joint Stock Land Bank loans on real estate secured in Iowa and Nebraska; now have about $23,000,000 of loans; we are limited under the law to 50% of the appraised value which is established by federal appraisers appointed by the Board in Washington; after the appraisal is made it goes to the Executive Committee of the Bank and if they approve the loan is made; limit is $50,000 to one person and $100 per acre on land. In 1917 land values advanced very rapidly in Nebraska culminating in the fall of 1919 or the spring of 1920; during that period the increase was from 50% to 100%; decline began early in spring of 1920 and is still continuing; practically no sales of land after middle of 1920 unless they were forced sales; the average crop of 1920, in the fall of that year or winter of 1921, would hardly pay expenses so there was no net profit; the general decline in everything and especially farm products began about the middle of 1920; by the
277 fall of 1920 farm products had fallen off, corn from nearly $2 per bushel to twenty cents and other products not altogether in proportion, the corn standing the greatest decline of any. In making loans the income from the land is one of the things taken into account. I would say that the 1920 crop was sold at an actual loss considering the cost of production and that condition continued until spring of 1922. The loan end of the real estate business was lively during 1920. The interest rates on farm loans from the spring of 1920 up until and during 1921 were very high. The rate during the pre-war period was five per cent and it went up, beginning in 1918, to as high as seven per cent and a commission besides, until the middle of 1921 when it began to go down again. In fixing values for the purpose of loans we tried to get, as near as possible, what the land value was in 1916 and we did not use the peak prices; would say that the 1920 crop was sold at an actual loss over cost of production and this condition continued until spring of 1922; our loans were limited somewhat because our source of revenue is the sale of 5% bonds and until November, 1921 we were unable to sell them except at such discount we could not afford to do business. Think our bank furnished the railroad companies some data at their request as to our loans.

DEFENDANT'S EXHIBIT 10.

The defendants next offered and there was received and read in evidence, without objection, their Exhibit 10, being the testimony of Herman A. Penner, adduced during the trial on the merits of

the 1921 tax suit of the Chicago & Northwestern Railway
278 Co.; have resided in Omaha 7 years and am Assistant secretary of the Peters Trust Company which is engaged to a large extent in making farm loans. We have approximately $36,000,000 in farm and city loans; I would say $30,000,000 in farm loans; Nebraska is our main state although we operate in other states; am correspondent for Prudential Insurance Company for this territory. A year ago we returned to the old valuations of five years ago, because we found it difficult to arrive at a fair value of farm lands; there was nothing selling; farms could not be appraised according to income and the Prudential Insurance Company adopted the policy of going back to the valuations of five years ago; we could not use the high priced valuations and had nothing else to base our valuations on. The price of corn declined to 15 cents a bushel. We have never made a loan to exceed $100 per acre.

The defendants offered in evidence their exhibit 13, a compilation of 58 affidavits from 20 counties widely scattered in Nebraska, showing a statement of value by residents being owners of land, in these several counties and giving a total acreage assessed value, for 1922, of 74.28% of the average actual value of the property. These affidavits were secured through the County Attorneys of the several counties in Nebraska.

279 The defendants then offered and there was received and read in evidence Defendant's Exhibit 14, consisting of 19 affidavits from land owners concerning the actual value of land in ten counties of the State of Nebraska, showing the assessed valuation of the same land and that the assessed value of these lands for 1922 is 66.85% of the actual value according to the testimony of the affiants.

The defendants offered and there was read in evidence the affidavit of Harry W. Scott, Assistant Tax Commissioner for the State of Nebraska, same being identified as Defendant's Exhibit 15. This exhibit refers solely to the 58 affidavits heretofore introduced as Defendant's Exhibit 13. The average value of the land in the 20 counties covered by the 58 affidavits, as revealed by the affidavits, is $71.15 per acre and the average assessed value of these lands for 1922 is $52.85 per acre, making an average of assessed value 74.28% of actual value.

The defendants offered and there was read in evidence Defendants Exhibit 16, being a compilation of the affidavits of County Clerks and Registers of Deeds respectively, in 40 Nebraska counties, showing the transfers of rural real estate by warranty deeds, sheriff's deeds and referee's deeds during the period from July 1, 1921 to July 1, 1922, not including any transfer where the consideration was merely nominal or for love and affection, and including no transfers of real estate where the land conveyed was less than twenty
280 acres. These witnesses include Cuming County but the counties are fairly and well distributed over the state. During the period from July 1, 1921 to July 1, 1922 the assessed value of the lands is 60.95% of the selling value as shown by the consideration in the deeds. The transfers from January 1st to July

1st, 1922 gives a percentage of 65.40%; that is, the assessed value is 65.40% of the selling value.

From July 1, 1921, to July 1, 1922.

Acres conveyed	429,099
Consideration	$24,233,555.00
Assessed valuation	$14,869,361.00
Average selling price per acre	$56.47
Average assessed value per acre	$34.42

DEFENDANTS' EXHIBIT 17.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit 17, an affidavit of A. M. Clark, which is in the following language: "A. M. Clark, being first duly sworn, on oath deposes and says that he is the duly elected, qualified and acting assessor of Adams County, Nebraska, that he has read the affidavit of Mr. Charles C. Parmelee, filed in this cause, and that the statement in Mr. Parmele's affidavit that the affiant said that in an address by W. H. Osborne to the county assessors in the spring of 1922, Mr. Osborne stated that where a farm was worth $125 actual value per acre, that they should assess it at $80-$95 per acre, which would be about 70 or 75% of the
281 actual market value, is untrue, and that affiant never heard W. H. Osborne make that statement or that statement in substance, that he never stated to Mr. Parmalee that he had heard W. H. Osborne make such statement, or that in substance, and that Mr. Parmalee's statement is untrue.

Affiant further states that the only instructions that he has had from W. H. Osborne as State Tax Commissioner were to assess property at its fair market value in accordance with the law.

Affiant further says as showing the correctness of his assessments in Adams County, Nebraska, he cites the following instances of sales.

In November, 1922, a section of land about three miles from Kenesaw was sold at private sale for about 50¢ per acre less than its 1922 assessed value. On December 14th, 1922, an 80 acre tract about six miles from Hastings was sold at partition sale for about $5,000, and was assessed for 1922 at $6,500, that on the same day a 160 acre tract about six miles form Hastings was sold at about $12,000, and the 1922 assessed value of the same land was approximately $13,000.

Affiant further says that several instances have been called to his attention during the past year, where city property in Adams County has been sold for less than its 1922 assessed valuation."

DEFENDANTS' EXHIBIT 18.

The defendants then offered and there was read in evidence, without objection, Defendant's Exhibit 18, a telegram from W.
282 C. Hill, County Assessor of Chase County, to the defendant Osborne, date December 18, 1922, as follows: "W. H. Osborne

State Tax Commissioner Clerk U. S. District Court Omaha Nebr. Affidavit personal opinion. No understanding with anybody. (Signed) W. C. Hill, Co. Assessor."

DEFENDANTS' EXHIBIT 19.

The defendant then offered and there was read in evidence, without objection, Defendant's Exhibit 19, being an affidavit of Madge Disbrow, County Clerk of Furnas County, in the following language: "I, Madge Disbrow, County Clerk of Furnas County, do hereby certify that I did not read the affidavit carefully that was signed by me November 9, 1922 in regard to the assessment of real estate in Furnas County and that I refute the statement signed by me that instructions from the State Tax Commissioner's office were to assess real estate at less than full value. The instructions received by me from said Tax Commissioner W. H. Osborne were to assess all real estate at full market value".

DEFENDANTS' EXHIBIT 20.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit "20", being an affidavit of John Scott, County Assessor of Custer County, in the following language: "John Scott, being first duly sworn, says that he is the duly elected, qualified and acting County Assessor of Custer County, Nebraska; that on or about the 16th day of November, 1922, he was approached by a Representative of the Chicago, Burlington and Quincy Railroad Co., whose name this affiant does not
283 now recall, who ask- this affiant at what percent of the actual value farm lands were assessed, in his opinion, in Custer County, Nebraska, for the year 1922. This affiant replied, that in his opinion, farm lands were assessed at 60 per cent of their actual value, whereupon this affiant was ask- by said representative of said Railroad Co., if the affiant would sign an affidavit to that effect, and upon the affiant's replying in the affirmative, the said representative of the said Railroad Co., produced a type written affidavit which this affiant signed without reading and without knowing further as to its contents, as affiant did not have his glasses or spectacles and it is very difficult for affiant to read without them.

Just today affiant learned that in signing said affidavit, he may have signed a statement which said, that he as said County Assessor, had received instructions from W. H. Osborne, State Tax Commissioner, to assess Custer County farm lands for the year 1922, at 60 per cent of their actual value; but this affiant says that he did not receive any such instructions from the said Tax Commissioner, and did not receive any instructions whatever from the said State Tax Commissioner, directing or advising this affiant, as to what per cent of their actual value farm lands should be assessed; and this affiant further says that he did not knowingly make any statement to the contrary."

Defendants then offered and there was read in evidence,
284 without objection, Defendant's Exhibit 21, an affidavit of Mr. Arterburn, County Assessor of Perkins County, to the effect that he received no instructions from the State Tax Commissioner to assess real estate in Perkins County at less than its actual value for the purposes of taxation.

Defendants then offered and there was received in evidence, without objection, defendant's exhibit 22, being an affidavit of Frank W. Irish, County Treasurer of Box Butte County, Nebraska, identifying publication of tracts of land offered for sale in Box Butte County for taxes in 1922, showing 468 tracts of city and village property and 630 tracts of rural real estate.

DEFENDANTS' EXHIBIT 23.

Defendants then offered and there was received in evidence, without objection, defendant's exhibit 23, as follows:

"Be it remembered, that heretofore, to wit: on the 6th day of August, 1912, the following entry was made in the records of the Nebraska State Railway Commission, in the matter of the physical valuation of the Chicago, Burlington & Quincy Railroad Company, to wit:

Lincoln, Nebraska, August 6, 1912.

* * * * * * *

The hour of nine o'clock having arrived, the Commission resumed the hearing of matters pertaining to the physical valuation of the Chicago, Burlington & Quincy Railroad Company, as per adjournment taken August 3rd. The appearances were the same as at the preceding session. The evidence was taken in shorthand, being reported by Miss Emma J. Hedges, official reporter for the
285 Commission, and on the conclusion of the hearing the railroad company was given until November 1st to submit its brief covering the question at issue. (Signed) A. B. Allen, Secretary.

Approved: (Signed) H. J. Winnett, Chairman.

STATE OF NEBRASKA,
Lancaster County, ss:

I, Mary E. Sheehan, assistant secretary of the Nebraska State Railway Commission, hereby certify that the attached is a true copy of entry in the minutes of the proceedings of the Nebraska State Railway Commission of date August 6, 1912, in the matter of the physical valuation of the Chicago, Burlington & Quincy Railroad Company, as the same is of record in this office. I further certify that I have made a careful examination of the records of the Nebraska State Railway Commission and the foregoing is the last order made with respect to the physical valuation of the Chicago, Bur-

lington & Quincy Railroad Company in Nebraska, and that no final order with respect to such valuation appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the Nebraska State Railway Commission, this 16th day of December, 1922. Mary E. Sheehan, Assistant Secretary Nebraska State Railway Commission." (Seal.)

286 At this time, it being five-forty o'clock P. M., an adjournment was taken until tomorrow, Tuesday, December 19, 1922, at nine-thirty o'clock A. M.

Tuesday, December 19, 1922—
nine-thirty o'clock a. m.

All parties present as before. Further proceedings as follows:

The defendants offered and there was received and read in evidence page 70 of the "Statistics of Railways in the United States" relating to "Taxes and Assessments for the Year Ended Dec. 31, 1920—Class I Carriers and Their Nonoperating Subsidiaries," published by the Interstate Commerce Commission as follows:

(Here follows extract from I. C. C. Report, marked page 287.)

288 These statistics show the per mile taxation of railroads in the respective states but not the rates of levies. For instance, Alabama is taxed $560 per mile; Arizona $776 per mile; Connecticut $1,977 per mile, and then on down until we come to Nebraska, $667 per mile.

289 DEFENDANT'S EXHIBIT 26 & 27.

Defendants then offered and there was received and read in evidence, without objection, defendant's exhibits 26 and 27, being parts of pages 102 to 109 inclusive, of report of Department of Agriculture for the State of Nebraska for 1921, and Bulletin No. 114, as follows:

289a Summary Corn.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	6,954,061	17.7	123,298,649	$160,288,243
1919	7,039,811	25.8	182,250,823	227,813,528
1920	7,560,355	33.8	255,544,816	127,772,408
1921	7,418,700	28.1	208,732,212	45,921,086

Summary Winter Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,015,844	11.1	33,520,047	$67,040,094.00
1919	3,716,159	14.8	55,280,969	110,561,938.00
1920	3,334,547	17.4	58,106,940	92,971,104.00
1921	3,761,683	14.4	54,340,841	46,189,714.85

Extract from S. C. C. Report.

STATISTICS OF RAILWAYS IN THE UNITED STATES.

nd Assessments for the Year Ending Dec. 31, 1920— Class 1 Carriers and Their Nonoperating Subsidiaries.

Class 1 Carriers	Subsidiary to Class 1 Carriers	STATE	TOTAL AMOUNT	Per Mile of Line	Class 1 Carriers
281,258,069	$1,492,464	Nebraska	$ 4,159,281	$ 677	$4,159,281
		Nevada	1,543,485	942	1,543,485
2,548,239	--------	New Hampshire	1,005,430	827	1,005,430
1,572,112	--------	New Jersey	11,188,775	5,292	10,710,925
3,912,137		New Mexico	2,467,111	915	2,467,111
7,179,287	7,368	New York	17,860,538	2,271	17,603,616
3,344,091	200	North Carolina	2,128,612	552	2,124,627
1,974,929		North Dakota	4,997,344	969	4,997,344
164,331	1,041	Ohio	16,841,495	2,048	16,840,721
2,166,797		Oklahoma	5,462,847	864	5,461,508
2,481,022		Oregon	2,721,507	1,060	2,721,457
3,844,290		Pennsylvania	9,342,090	945	9,281,217
16,323,371	98,375	Rhode Island	585,359	2,966	585,359
9,420,707	1,641	South Carolina	1,950,592	623	1,950,592
7,855,052		South Dakota	3,718,490	900	3,718,490
6,179,658	8,812	Tennessee	2,583,797	702	2,582,441
2,179,504	4,286	Texas	5,097,866	364	5,097,087
3,788,386		Utah	1,855,786	907	1,855,786
1,724,961		Vermont	450,543	608	450,543

...t from I. C. C. Report.

RAILWAYS IN THE UNITED STATES.

...ar Ending Dec. 31, 1920— Class 1 Carriers and Their Nonoperating Subsidiaries.

...sidiary Class 1 ...riers	STATE	TOTAL AMOUNT	Per Mile of Line	Class 1 Carriers	Subsidiary to class 1 Carriers
92,464	Nebraska	$ 4,159,281	$ 677	$4,159,281	----------
------	Nevada	1,543,485	942	1,543,485	----------
------	New Hampshire	1,005,430	827	1,005,430	----------
	New Jersey	11,188,775	5,292	10,710,925	$477,850
	New Mexico	2,467,111	915	2,467,111	
7,368	New York	17,860,538	2,271	17,603,616	256,922
200	North Carolina	2,128,612	552	2,124,627	3,985
	North Dakota	4,997,344	969	4,997,344	
1,041	Ohio	16,841,495	2,048	16,840,721	774
	Oklahoma	5,462,847	864	5,461,508	1,339
	Oregon	2,721,507	1,060	2,721,457	50
	Pennsylvania	9,342,090	945	9,281,217	60,873
98,375	Rhode Island	585,359	2,966	585,359	
1,641	South Carolina	1,950,592	623	1,950,592	
	South Dakota	3,718,490	900	3,718,490	
8,812	Tennessee	2,583,797	702	2,582,441	1,356
4,288	Texas	5,097,866	364	5,097,087	779
	Utah	1,855,786	907	1,855,786	
	Vermont	450,543	608	450,543	

[illegible]	1,479	Washington	[illegible]	[illegible]	[illegible]	
7,578,625		West Virginai	3,879,092	1,195	3,869,566	9,526
9,753,406		Wisconsin	6,875,961	995	6,874,066	1,895
3,611,616		Wyoming	1,212,958	686	1,212,958	
3,358,579		Districy of Columbia	79,120	2,291	79,120	
4,283,757		United States Government				
			50,542,597	226	50,001,370	541,227

credit of $1,596 not localized by States. These amounts are included in the income accounts.

Statement No. 39- Taxe

STATE	TOTAL AMOUNT	TOTAL Per Mile of Line
Total, United States	$232,750,533	$1,262
Alabama	2,548,239	560
Arizona	1,572,112	776
Arkansaw	3,912,137	948
California	7,186,655	1,071
Colorado	3,344,291	729
Connecticut	1,974,929	1,977
Delaware	165,372	493
Florida	2,166,797	542
Georgia	2,491,022	455
Idaho	3,844,290	1,500
Illinois	16,421,746	1,421
Iddiana	9,422,348	1,328
Iowa	7,855,052	808
Kansas	6,188,470	688
Kentucky	2,183,792	624
Louisianna	3,788,386	971
[illegible]	1,72[illegible] 961	[illegible]

Massachusetts	3,339,127	1,618
Michigan	7,578,625	1,083
Minnesota	9,753,406	1,151
Mississippi	3,611,616	942
Missouri	3,358,579	457
Montana	4,283,757	871

1
Excludes $1,064,545 Canadian Taxes, $447 Cuban Taxes,

Summary.

	Cattle.		Hogs.		Shee
	Number.	Value.	Number.	Value.	Number.
00	2,094,875	$213,943,510	2,038,236	$61,147,080	278,821
72	2,673,993	124,806,234	1,806,856	42,715,495	218,958
42	2,598,057	113,778,114	1,707,092	28,204,860	236,402
27	2,411,818	79,875,741	1,712,396	18,658,993	183,778

	Hogs.		Sheep and goats.	
	Number.	Value.	Number.	Value.
	,038,236	$61,147,080	278,821	$3,345,852
	,806,856	42,715,495	218,958	1,223,902
	,707,092	28,204,860	236,402	1,959,740
	,712,396	18,658,993	183,778	839,318

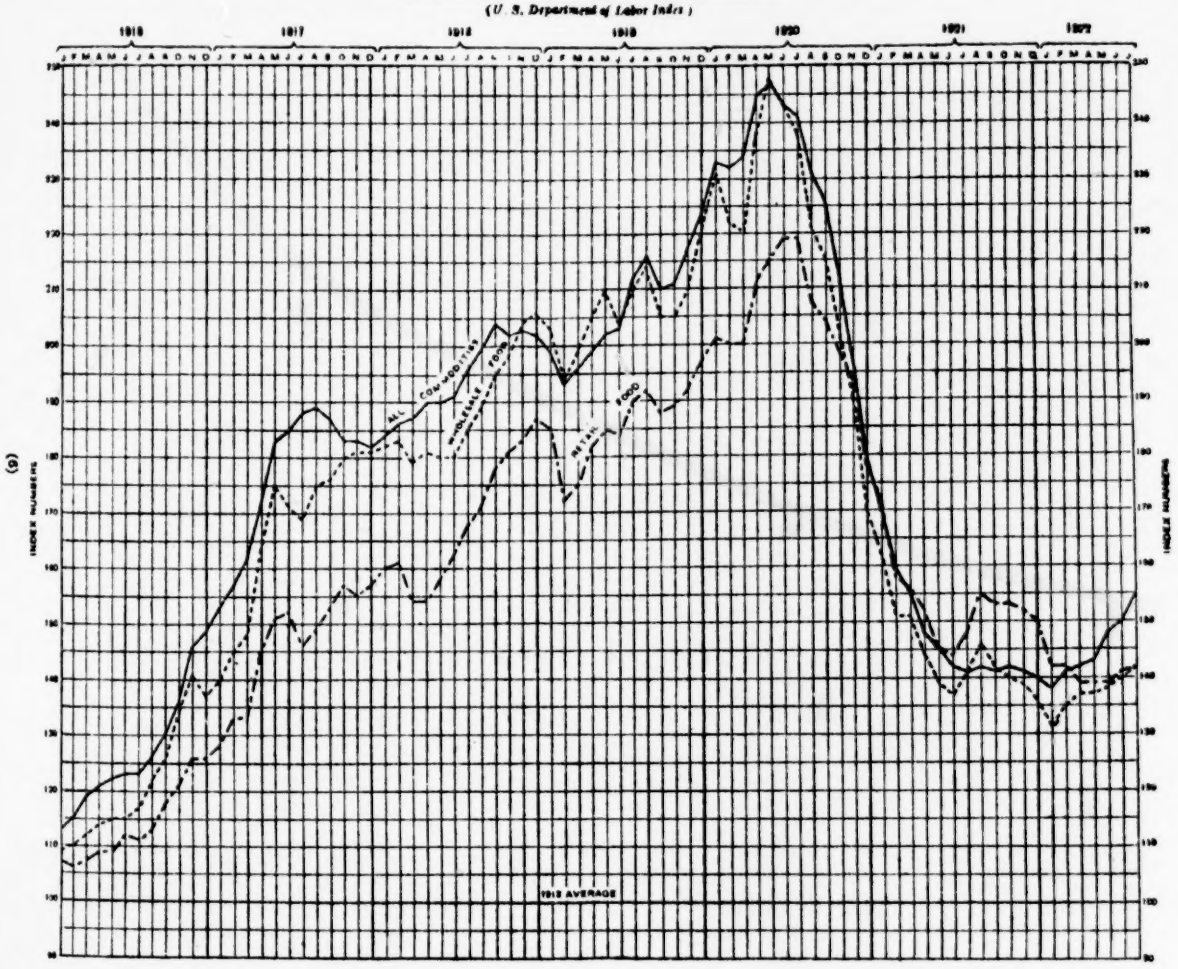
Defendant's Exhibit 28

Ex 28

COMPARISON OF WHOLESALE AND RETAIL FOOD PRICE INDEX NUMBERS.

WITH INDEX OF ALL COMMODITIES AT WHOLESALE.

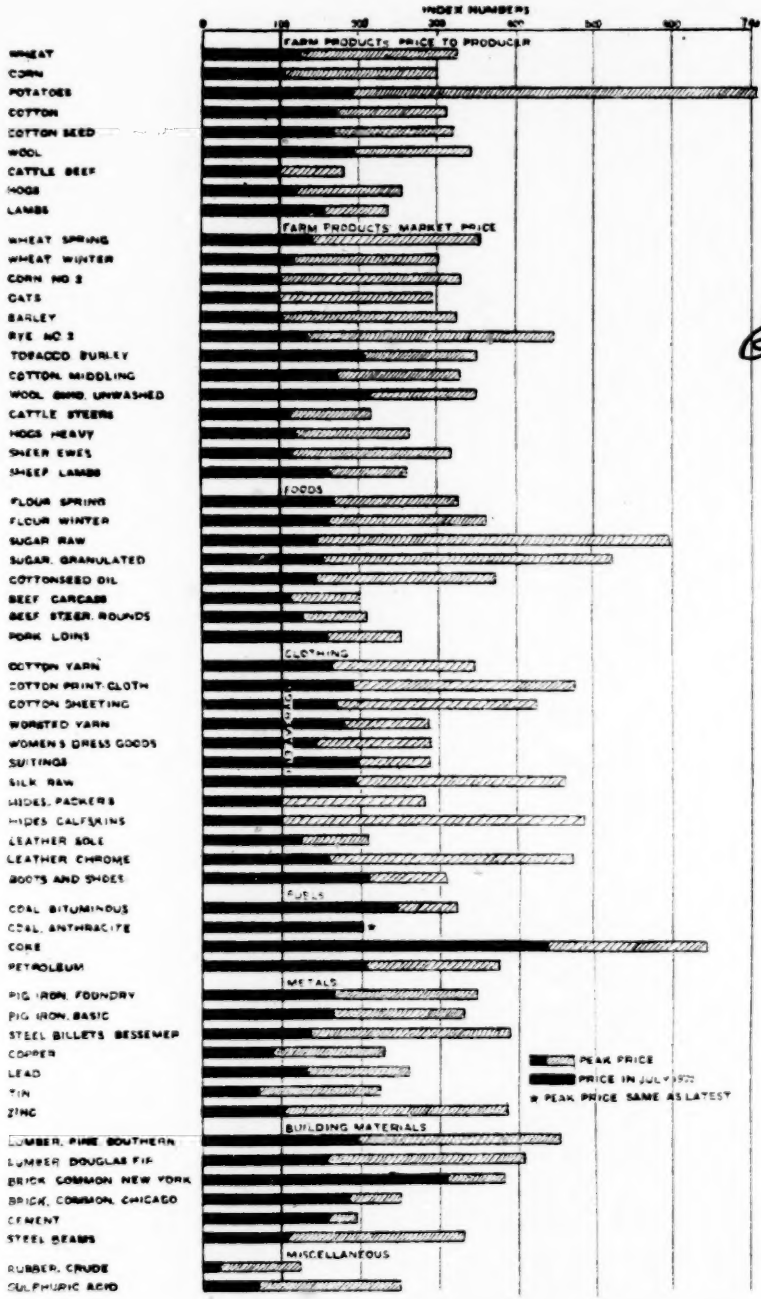
(*U. S. Department of Labor Index.*)



Authority: Survey of Current Business, U.S. Dept. of Commerce, No. 13, Page 6, September 1922

COMPARISON OF PRESENT WHOLESALE PRICES WITH PEAK AND PRE-WAR.

(Relative prices 1913=100)



Authority: Survey of Current Business, U.S. Dept. of Commerce, No. 13, Page 4, September 1922.

Summary Spring Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	811,815	11.9	9,721,793	$19,443,586.00
1919	667,572	8.5	5,699,458	11,113,943.10
1920	258,448	9.5	2,453,476	3,680,214.00
1921	205,059	11.3	2,317,881	1,854,324.80

Summary All Wheat.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	3,827,659		43,241,840	$86,483,680.00
1919	4,383,731		61,234,602	121,675,881.00
1920	3,592,995		60,560,446	96,651,318.00
1921	3,966,742		56,658,722	48,044,039.00

Summary Oats.

Year.	Acreage.	Av. yield.	Total No. bu.	Value.
1918	2,530,877	22.2	56,215,487	$33,729,200.00
1919	2,133,475	32.8	70,133,995	44,184,416.85
1920	2,400,062	34.6	83,037,162	33,214,864.80
1921	2,585,084	27.1	70,273,858	12,649,294.44

Alfalfa.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	1,164,941	2.1	2,527,834.5	$63,195,862.00
1919	1,180,324	2.7	3,214,999.1	64,299,982.00
1920	1,232,947	2.86	3,527,689.5	35,276,895.00
1921	1,195,562	2.36	2,828,757.0	19,801,299.00

Wild Hay.

Year.	Acreage.	Av. yield.	Total No. tons.	Value.
1918	2,587,678	.88	2,285,010.2	$43,415,193.00
1919	2,771,234	1.02	2,842,304.8	45,476,866.88
1920	2,315,359	1.02	2,319,777.4	18,558,219.20
1921	2,256,315	.84	1,897,490.0	11,384,940.00

(Here follows Summary marked side folio page 2896.)

290 Defendants then offered and there was received in evidence, without objection, defendant's exhibits 28 and 29, being as follows:

(Here follows Defendants' Exhibits 28 and 29, marked side folio pages 290½ and 291.)

292 The defendant then offered and there was received and read in evidence, without objection, exhibit 31, being an extract from the report of the Chicago, Burlington & Quincy Railroad Company to the Nebraska State Railway Commission showing dividends paid during 1921, which is as follows:

(NOTE.—The information here offered from said report is found in the affidavit of E. F. Morgan, found at side page 265 hereof.)

293 DEFENDANTS' EXHIBIT 32.

The defendants offered and there was received and read in evidence, without objection, Defendant's Exhibit 32, an affidavit of the defendant W. E. Osborne, Jr., to which is attached, as a part thereof, its exhibits "A," "B" and "C." The substance of the affidavit is that affiant has occupied the office of Tax Commissioner of Nebraska since about April 28, 1921; that prior thereto he was Secretary of the State Board of Equalization of the State of Nebraska for more than two years and is generally familiar with the methods and procedure of taxation in said state and with property values in Nebraska for three years last past. Affiant has charge and custody of the files and records of the State Board of Equalization containing full information of the assessments and taxation of all railroads operating in Nebraska; that the assessment of plaintiff's property used in conducting transportation for the years 1911 to 1922 is shown on Exhibit "A." The assessment of all railroads within the state is shown for the same years in Exhibit "B"; that prior to 1921 the assessed value of all property shown upon Exhibit "C" was entered at one-fifth of the actual value; that there has been a gradual increase in the assessed value of railroad property throughout said period due to the increase in the value of all items of property used in the construction of railroads and in the increase in the value of the right-of-way; the same is true of all property values shown by Exhibit "C";
294 there has been no discrimination against the property of plaintiff or railroads in general. At the time of the assessment of plaintiff's property by the State Board of Equalization plaintiff was at once notified, on the 15th day of June, 1922, but the assessment value as determined by the Board was by affiant certified to the County Clerks of the State on or about June 30, 1922, and if plaintiff is now allowed to enjoin the collection of the taxes levied against its property the accounts of the state and every municipality in every county traversed by plaintiff's road will be thrown into confusion, utmost difficulty will be suffered and in many school districts there will be no funds with which to operate the schools and they will have to be suspended a considerable portion of the school year, and other departments of local and state governments will also suffer great loss and damage. Affiant has given considerable study to the value of real estate and its improvements and in his best judgment the peak of prices prevailed about the fall of 1919, and from that time down to the assessment period, April 1, 1922, farm lands and improvements,

in affiant's judgment, depreciated in value approximately 33 1/3%. Affiant denies that at any time there has been any conspiracy on the part of the State Board of Equalization or the individual members thereof to place a value upon plaintiff's property, or the property of the state in general, at any other figure than the directions given to the Board by the statutes of this state, namely, at its actual cash value. Affiant further denies that there has ever been any understanding between affiant and the individual members of the
295 State Board of Equalization, with the assessing authorities of this state, other than that cont-ined in the uniform written instructions sent out to the assessing authorities: "The only instructions that I am permitted to give you in valuing this class of property is that directed to you by the statutes namely at it- actual value, and as defined in the Revenue Law, Actual Value means its actual value in the market in the ordinary course of trade."

EXHIBIT A TO OSBORNE'S AFFIDAVIT.

"Chicago, Burlington & Quincy Railroad.

EXHIBIT A,

Being Memoranda of Assessed Values of the Chicago, Burlington & Quincy Railroad in the State of Nebraska as Shown by the Records in the Office of the Tax Commissioner for the Years 1911 to 1922, Inclusive.

1911	$119,441,865.00	
1912	119,441,865.00	
1913	119,441,865.00	
1914	119,441,865.00	
1915	119,441,865.00	
1916	121,934,740.00	
1917	121,932,625.00	
1918	121,978,640.00	
1919	122,015,515.00	9%
1920	131,765,605.00	Decrease 13%
1921	131,639,875.00	over 1919.
1922	137,589,782.00	

Increase since 1911 is 13%."

296 EXHIBIT "B" TO OSBORNE'S AFFIDAVIT.

Being Memoranda of Assessed Values of Railroads in the State of Nebraska as Shown by the Records in the Office of Tax Commissioner for the Years 1911 *to* 1922, *Inclusive, the Same Being the One-fifth of Actual Values, Save and Except the Years* 1921 *and* 1922, *Which is Actual Value.*

1911	54,806,915.00	
1912	55,050,286.00	
1913	55,829,328.00	
1914	55,945,074.00	
1915	55,945,067.00	
1916	55,833,234.00	
1917	56,855,453.00	
1918	56,827,782.00	
1919	56,831,076.00	
1920	60,851,333.00	8 per cent inc.
1921	367,695,100.00	Actual value.
1922	315,629,880.00	Actual value.

Valuations shown above, from 1911 to 1920, inclusive, under Nebraska statutes, are on a twenty per cent basis of actual value.

297 EXHIBIT "C" TO OSBORNE'S AFFIDAVIT.

Being Memoranda of the Assessed or One-fifth Total Value of All Property as Shown by the Grand Assessment-roll of the State of Nebraska from 1911 *to* 1921, *Inclusive, Save and Except for the Years* 1921 *and* 1922, *Which is the Full and Actual Value or Five Times That of the Other Years.*

	Grand Total.	
1911	$415,670,075	
1912	463,371,889	
1913	470,690,414	
1914	471,940,195	
1915	481,931,238	
1916	500,827,274	
1917	528,891,424	
1918	567,947,914	
1919	568,921,570	
1920	762,284,909	34% Increase.
1921	3,305,477,292	13% Decrease.
1922	3,191,705,290	3% Decrease.

Valuations shown above, from 1911 to 1920, inclusive, under Nebraska statutes, are on a twenty per cent basis of actual value.

The plaintiff objected to the admission of the foregoing affidavit of W. H. Osborne, concerning the intention of the members of the Board, as incompetent.

"Judge Lewis: I don't think it is necessary to have a ruling on this."

The defendants then offered and there was received and read in evidence, without objection, Ex. 33, being an affidavit of W. H. Osborne, Jr., as follows:

DEFENDANT'S EXHIBIT 33.

Affidavit.

STATE OF NEBRASKA,
County of Lancaster, ss:

W. H. Osborne, being first duly sworn, on oath deposes and says that in connection with the study of the affidavit of A. W. Scribner filed in this case, affiant secured from Mr. Scribner the original cards showing the conveyances for Nance County and Merrick County, total figures for which are given in Mr. Scribner's affidavit.

There were twenty-five transfers in Nance County as shown by the cards, 16 of which transfers were in 1921 and 9 in 1922. The total consideration of the 16 conveyances in 1921 was $414,800, and the total assessed value for 1921 was, on the same tracts, $183,978, giving a percentage of assessed value to the actual value of 44.5%. The total consideration for the 9 conveyances in 1922 was $164,690, and the total assessed value for 1922 on the same tracts of land was $85,249, making a ratio of assessed value to actual value of 52.9%.

Affiant says that he selected these two counties for consideration for the reason that Mr. Scribner stated that the relation of assessed value to sale value in the fifty-three counties records of which were compiled by him, was 46.5%. His compilation shows Merrick County to have a ratio of 46% and Nance County to have a ratio of 47%, or an average of 46.5% or the same ratio as all the counties under his showing. Analysis by years shows the fallacy of comparing 1921 with 1922, prices of land having continued to decline.

Affiant further says that there were thirty-four transfers in Merrick County as shown by the cards, 29 of which transfers were in 1921 and five of which were in 1922. The total consideration of the 29 conveyances in 1921 was $519,105, and the total assessed value for 1921 on the same tracts was $239,825, giving a percentage of assessed value to the actual value of 44.5%. On the five conveyances in 1922 the total consideration was $52,200, while the total assessed value of the same tracts was $32,750, or a percentage of 62.7%. (Signed) W. H. Osborne.

Subscribed and sworn to before me this 18 day of December, 1922, R. C. Hoyt, Clerk of the District Court. (Seal.)

301 The defendant introduced and there was read in evidence, without objection, affidavit of W. H. Osborne, defendant herein, as follows:

"I, W. H. Osborne, do on oath deny that I ever at any time gave any instructions to W. C. Hill, County Assessor, of Chase County, to assess real estate or any other property, at anything less than its actual cash value."

After an extended colloquy between counsel for the respective parties, in which members of the court participated in part, with respect to reports made by representatives of plaintiff, in 1909, to the Nebraska State Railway Commission, Mr. Root stated, in substance: There is no difficulty in submitting to the court briefly and so that everyone could understand, the valuations contended for by the railroad company and the representatives of the State Railway Commission concerning the value of the plaintiff's property in 1909. Mr. Root also stated: "I have a blue print which shows the valuation reproduction new as contended for by the engineers of the Commission and the engineers of the railroad company." This blue print was identified as defendants' exhibit 35 and was, by defendants, without objection, offered and received in evidence, and is as follows:

(Here follows Defendants' Exhibit 35, marked side folio page 302.)

303 The defendants then offered and there was received in evidence, without objection, their exhibits 36 and 37, being copies of pages 26 and 27 of the Annual Report of the Chicago, Burlington and Quincy Railroad Company to its stockholders for the year ending December 31, 1921, which are as follows:

(Here follow Exhibits 36 and 37, marked side folio page 304.)

305 The defendants then offered and there was received and read in evidence, without objection, Defendant's Exhibit "38," being page 95-A of the Annual Report of the plaintiff for the year 1909 to the Nebraska State Railway Commission showing the traffic and mileage statistics of Nebraska, same being as follows:

(Here follow Defendants' Exhibits 38 and 39, marked side folio pages 305½ and 306.)

307 The defendants then offered and there was received and read in evidence, without objection, Defendants' Exhibit 39, being page 111 of the volume last above referred to, giving the mileage of the entire lines of the plaintiff and the mileage in the several states, which revealed that the total mileage operated upon the entire system was 9020.82, and in Nebraska the mileage was 2843.11. (Ex. "39" returned at page 176 hereof.)

TRAFFIC AND MILEAGE STATISTICS—STATE OF Nebraska—CONCLUDED.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	3767735	
38. Passenger Locomotive-Miles,	3767047	
39. Mixed Locomotive-Miles,	273826	
40. Special Locomotive-Miles,	2809	
41. Switching Locomotive-Miles,	1405579	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,	9206996	9206996
43. Nonrevenue Service Locomotive-Miles,		332077
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	87212609	
45. Empty,	31877159	
46. Caboose,	3512835	
47. TOTAL FREIGHT CAR-MILES,	122602603	122602603
Passenger Car-Miles—		
48. Passenger,	10900661	
49. Sleeping, Parlor, and Observation,	6105715	
50. Other Passenger-Train Cars,	7663673	
51. TOTAL PASSENGER CAR-MILES,	24670049	24670049
Special Car-Miles—		
52. Freight—loaded,	32047	
53. Freight—empty,	39	
54. Caboose,	2325	
55. Passenger,	11378	
56. Sleeping, Parlor, and Observation,	1278	
57. Other Passenger-Train Cars,	342	
58. TOTAL SPECIAL CAR-MILES,	47409	47409
59. TOTAL REVENUE CAR MILEAGE,		147320461
60. Nonrevenue Service Car-Miles,		2072552
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles, M.P.R.R.M. 1003	46.7 3464029	
62. Passenger Train-Miles, M.P.R.R.M. 564.	49.6 3680667	
63. Mixed Train-Miles,	3.6 271473	
64. Special Train-Miles,	.3 2570	
65. TOTAL REVENUE TRAIN MILEAGE,	100.2 7418734	7418734
66. Nonrevenue Service Train-Miles,		262043

Dept 5 4 38
GWP

The defendants offered and there was received and read in evidence, without objection, Exhibit 40, being pages 237, 238 and 239 of Vol. 58 of the Reports of the Interstate Commerce Commission under the title "Revenue Needs of Carriers in Western Group," the same being as follows:

DEFENDANTS' EXHIBIT 40.

"Revenue Needs of Carriers in Western Group.

The western carriers ask that their rates be fixed on a basis that will permit them to earn a net railway operating income of $537,833,024, which represents a return of 6 per cent on a book cost of $8,963,883,753[18]. (Footnote as follows: [18]This represents the book cost of 59 class I systems, 53 class II, 41 class III, and 32 switching and terminal companies. The figures include additions and betterments to October 31, 1919, the estimated cost of equipment allocated by the government to the carriers and the book cost of material and supplies as of October 31, 1919.) The extent to which the rates of transportation now in effect fall short of yielding the return sought by these carriers is indicated by the following
308 comparison:

Net railway operating income as sought by the carriers		[19]$537,883,024
Standard return		[20]401,215,984
Actual net railway operating income year ended October 31, 1919	$293,212,870	
Less corporate income charges net debit	28,027,616	
		[19]265,185,254
Adjusted net railway operating income year ended October 31, 1919		[19]226,831,658
Finally adjusted net railway operating income year ended October 31, 1919		[19]184,939,759

The figure $226,831,658 represents the actual income, as adjusted in conformity with the questionnaire. The figure $184,939,759 reflects adjustments subsequent to the questionnaire.[21]

(Foot notes as follows: [19] Includes 59 class I systems, 53 class II, 41 class III, and 32 switching and terminal companies; aggregate mileage, 138,243.74) ([20] Represents the average net railway operating income of class I railroads, excluding switching and terminal companies, for the years 1915, 1916 and 1917.)

(Foot note as follows: [21] The adjustment based on the question-aire reflected changes in certain items, as follows: Increase in railway operating revenues, $678,907; increase in railway operating expenses, $35,689,425; increase in railway tax accruals, $7,733,128; decrease in equipment rents, $4,523,553, net; decrease in joint facility rents, $304,163, net; increase in corporate items, $437,666, net. The adjustment made subsequent to the preparation of the questionnaire changes embraced the following: Estimated increased mail pay, $13,513,600; railway operating expenses, $21,092,697 representing increased wages and $21,254,298 representing increased fuel costs; railway tax accruals, $11,242,557, based upon increased income taxes incident to greater income if rate increase is granted; estimated increased allowance to private-car owners, $1,815,947.)

It will be observed that on the basis of the predictions of the carriers, the net railway operating income for this district will
309 be approximately $350,000,000 lower than the annual sum to which they claim to be entitled. They estimated that a general increase of approximately 24 per cent in freight revenue was required to return the amount claimed.

During the six years ended 1917 the railway operating income of the carriers averaged $386,000,000 annually; during the four years ended 1915 it averaged $347,000,000 annually; during the years 1916 and 1917 it averaged $464,000,000 annually; in 1918 it dropped to $330,320,330; and in 1919 it declined further to $302,857,219. During the six years ended 1917 the operating ratio ranged from 62.69 to 67.68; in 1918 it rose to 78.14, in 1919 to 80.96, and for the first four months of 1920 to 86.06.

The reports of the class I carriers of this district to us for the first four months of 1920 show a net railway operating income of $56,104,721. Deducting the railway-mail pay applicable to prior years, stated by the carriers to have been taken into account in these months, in amount $27,790,388, leaves $28,314,333 as the actual result of operations. Adding to this figure $1,209,969 to cover net railway operating income of carriers other than class I, produces $29,524,302.

During the period 1914 to 1919 the net railway operating income of the first four months of each year averaged 23.29 per cent of the aggregate for the year. Equating the actual results of
310 the first four months of 1920 on this basis produces an estimated net railway operating income of $126,768,149, the net railway operating income of an assumed period of twelve months on the basis of operating costs which prevailed during the first four months of 1920. Subtracting from this figure $3,789,728, which is the estimate of the carriers for increased allowances to private car owners, and $21,254,298, their estimate of increased fuel costs for the year, reduces it to $101,724,123.

The amount of freight and other transportation revenue, excluding passenger, mail and express reported to us by class I carriers for the first four months of 1920, aggregated $498,001,006. To this amount $16,462,794 has been added to cover revenues of carriers other than class I carriers, resulting in a gross estimated revenue of $514,463,800. During the years 1915 to 1919 inclusive, freight and other transportation revenue, excluding passenger, mail, and express for the first four months of each year, averaged 28.52 per cent of the aggregate for the year. Equating the actual revenues of the first four months of 1920 upon this basis produces $1,803,870,266, as the estimated revenues of an assumed period of twelve months based on the operations of the first four months of 1920.

The number of ton-miles of revenue freight for class I carriers in the western group during the past eight years is indicated below:

311

Year.	Revenue ton-miles.
1912	[22]82,888,199,102
1913	[22]96,986,976,238
1914	[22]92,284,883,754
1915	[22]90,945,571,633
1916 (June 30)	[22]112,156,323,212
1916 (December 31)	[23]123,250,722,123
1917	[23]138,044,743,597
1918	[23]142,335,128,414
1918	[23]130,606,713,832

The carriers estimate that the wage award made by the Labor Board under date of July 20, 1920, will add approximately $234,840,000 annually to the operating expenses of the carriers in the western group. This is equivalent to 11.2 per cent of the total railway operating revenue of the western carriers, as finally adjusted by them for the constructive year."

The defendants then offered and there was received and read in evidence, without objection, their exhibits 41 and 42, being application of Chicago, Burlington & Quincy Railroad Company to the Interstate Commerce Commission for authority to issue additional stocks and bonds. The material parts being as follows:

312 DEFENDANTS' EXHIBIT 41.

Before the Interstate Commerce Commission.

In the Matter of the Application of THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY for an Order of the Interstate Commerce Commission Authorizing the Issue of $60,000,000 Additional Capital Stock, $109,000,000 of 6% First and Refunding Mortgage Bonds, and Approving the Purposes and Uses Thereof.

Application.

The application of Chicago, Burlington & Quincy Railroad Company respectfully shows:

1. The full name of applicant is "Chicago, Burlington & Quincy Railroad Company," and its post office address is 547 West Jackson Boulevard, Chicago, Illinois.

2. Hale Holden is the president of the applicant, T. S. Howland is the secretary and treasurer thereof, and O. M. Spencer is its principal attorney. The post office address of these officers is 547 West Jackson Boulevard, Chicago, Ill.

The Board of Directors which has authorized the issuance of the securities covered by this application is as follows:

(Foot notes as follows: [22] Compiled by the Commission's Bureau of Statistics. [23] From carriers' exhibits.)

Ralph Budd	St. Paul.
Charles W. Bunn	St. Paul.
Claude G. Burnham	Chicago.
Robert J. Dunham	Chicago.
Howard Elliott	New York.
Louis W. Hill	St. Paul.
Hale Holden	Chicago.
Thomas S. Howland	Chicago.
Charles E. Perkins	Burlington.
Frederick H. Rawson	Chicago.
Jackson E. Reynolds	New York.
Oliver M. Spencer	Chicago.
William W. Baldwin	Chicago.

313 3. Applicant is a corporation of the State of Illinois under and subject to the general incorporation laws of that state. It was originally created and organized under special charters granted by the legislature of Illinois to various companies which were consolidated under the present name by articles of consolidation of date July 9, 1856, and again of date June 24, 1864. Of date June 24, 1914, its existence was renewed and extended as a corporation under the general incorporation law pursuant to an act of the legislature of Illinois June 7, 1911. Applicant is not incorporated in other states, but is authorized to do business in ten other states under authority of the laws of Illinois and of said states. The railroads in other states which it now operates, were originally constructed by companies incorporated under *under* the laws of such states, whose roads and franchises and other property have been acquired by applicant through fee simple conveyances from such corporations executed under the authority both of the laws of Illinois and of each state in which the properties are situated.

4. Applicant operates a system of railroads in the States of Illinois, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, Kansas, Colorado, South Dakota, Wyoming and Montana.

5. The nature of this application and the purposes and uses of the proposed issue of securities are as follows: (*a*) approval of applicant's proposed First and Refunding Mortgage to be dated February 1, 1921, to the First National Bank of the City of New York and Walter S. McLucas as trustees, to secure bonded indebtedness as provided therein. Copy of proposed mortgage is attached hereto;

(*b*) as a necessary basis for the bonds provided by said
314 mortgage, authorization of the issue by applicant of $60,000,000 additional capital stock and distribution of the same pro rata among its stockholders, thus transferring to capital account $60,000,000 of applicant's surplus (*c*) authorization of the issue of $109,000,000 in its First and Refunding Mortgage bonds, to reimburse applicant's treasury for moneys heretofore expended out of earnings in additions and betterments to applicant's railway operating property; $80,000,000 of said bonds, or the proceeds thereof, to be held in applicant's treasury free to be used for any lawful purpose, including dividend purposes, the balance of said bonds, $29,-

000,000 to be disposed of by the applicant only for future additions and betterments to its railway operating property.

6. The said proposed issue of securities is believed to be for a lawful object within applicant's corporate purposes, compatible with the public interest, appropriate for and consistent with the proper performance by applicant of service to the public as a common carrier, reasonably necessary and appropriate for such purposes, and otherwise within the terms of Section 20*a* of the Interstate Commerce Act. Among the facts relied on to support the application are the following:

(1) Applicant is a railroad corporation subject to the general railroad act of Illinois and owns and operates a system of railroads extending from Chicago westerly to St. Louis, Kansas City, Omaha, Denver, Billings, St. Paul and Minneapolis, of an aggregate operated mileage of about 9,372 miles. Its railroads extends through the highly developed agricultural and manufacturing states of Illinois, Wisconsin, Iowa, Missouri, Nebraska and Colorado, and
315 the agricultural, stock raising and mining states of Wyoming, South Dakota, and Montana, with many branches and feeders. Its system also taps the extensive coal fields of southern Illinois, which furnishes a very large ton-age. It has extensive and valuable terminals in the Cities of Chicago, St. Louis, Kansas City, Omaha, Denver and St. Paul, and has a very large and well established interchange of traffic with its connections. The property investment of applicant (December 31, 1919) in road and equipment was $492,716,639.10, with a total property investment of $535,210,890.33. On that date it had a corporate surplus of $241,781,197. Depreciation on its equipment at a rate unusually high as compared with other railroads, including the period of federal control, has been charged to the amount of $48,514,239.62. If the application herein is granted, there will remain a corporate surplus of $101,781,197.

Applicant's total capitalization is only $278,889,100 of which the capital stock outstanding amounts to $110,839,100 and the funded debt in the hands of the public to $168,050,000. The stock and bonds in the hands of the public per mile of road are $31,164.

There are three existing mortgages on applicant's railroads; (1) Nebraska Extension Mortgage, covering 1,471 miles in Nebraska, Colorado, Kansas and Wyoming, under which $18,294,000 of four per cent bonds are outstanding; (2) Illinois division mortgage, covering about 1,646 miles in Illinois, Iowa, Wisconsin and Minnesota, under which $84,427,000 of three and one-half and four per cent bonds are outstanding; (3) General Mortgage dated March 2, 1908, covering substantially applicant's railway property as then existing, under which $65,247,000 of bonds are outstanding,
316 and $139,744,000 are reserved under the terms of the mortgage for retiring prior obligations. The said mortgage is so limited that not over $300,000,000 can at any one time be outstanding thereunder. The bonds issued and to be issued under the said General Mortgage are also prohibited thereby to bear interest at over five per cent per annum. Before the passage of the Transportation Act,

1920, applicant had authority from the Public Utilities Commission of the State of Illinois to issue under its General Mortgage and to sell bonds to an aggregate amount in excess of $109,000,000 for the purpose of reimbursing its treasury for earnings theretofore expended for betterments and improvements to the property. But under market conditions prevailing for several years it has not been advisable or prudent to put on the market bonds bearing five per cent interest not redeemable before due, and it does not now appear that in the reasonable future it will be advisable or prudent to put said bonds on the market.

Besides this, were said $109,000,000 of General Mortgage Bonds issued and sold, it would practically close the said mortgage by reaching substantially the limit of bonds which may be issued and outstanding at any time thereunder. And the said Nebraska Extension and Illinois Division Mortgages are already closed. Therefore were said $109,000,000 of General Mortgage Bonds issued and sold, applicant would soon find it necessary in order to finance its additions and betterments, to execute a new mortgage on its railway properties subordinate to all of said liens, including the said $109,000,000 of General Mortgage Bonds. Under those conditions a new mortgage would be seriously objectionable, because it could not be
317 made eligible security for savings banks, trust companies, insurance companies, and similar investors, and these facts would require applicant to pay under such new mortgage an extravagant rate of interest.

Applicant therefore finds it an absolute necessity to its future expansion and growth as a railway system to issue a new mortgage which will provide for financing its additions and betterments for a considerable period. And if applicant is to put out a new mortgage and secure reasonable terms and rates of interest thereunder it must provide for the issue of said $109,000,000 of bonds under a new mortgage in lieu of issuing them under the General Mortgage. Indeed applicant would expect to exchange bonds under the Refunding mortgage for those already outstanding under the General Mortgage in order to make the bonds under the proposed new mortgage a security salable to savings banks, insurance companies, and like investors.

Applicant's said General Mortgage is seriously objectionable in respect of limiting to five per cent per annum the rate of interest on bonds issued thereunder and in not providing for a redemption privilege before due. It is quite essential, in order for applicant to secure the best terms for loans under market conditions from time to time, that the rate of interest and terms of redemption on each series of bonds be fixed from time to time as issued; and such rate of interest and terms of redemption will necessarily be subject as future bonds are issued to the approval of this commission.

The laws of the principal investment states for corporate securities provide in order to be legal investments for savings banks, etc., that bonds shall not exceed three times the capital stock of the issuing corporation. It is, therefore, imperative in order to make a refund-

ing mortgage and provide for adequate future financing that
318 applicant increase its capital stock. By the proposed increase to approximately $170,000,000 applicant will have under the laws of such investment states a basis for a bond issue up to approximately $510,000,000 instead of approximately $332,000,000 as at present. $510,000,000 is a necessary limit to enable applicant to finance its necessary additions and betterments for a reasonable term of years.

(2) Since July 1, 1901, applicant has invested in additions and betterments to its operating property the sum of $189,070,776.12 out of earnings from operations which justly belonged to its stockholders, at least to the extent of two-thirds thereof or more. For the most part these additions and betterments added to the fair value of applicant's property and to the earning capacity thereof fully in proportion to the expenditures, only a small portion of the expenditures having been in nonrevenue producing additions and betterments. A statement of said expenditures and an itemization thereof according to the primary accounts of the commission are hereto attached and referred to. During this period applicant has not increased the aggregate of its stock or bonds, substantially, financing all of its improvements and betterments work out of earnings. This policy has resulted in the abnormal capitalization heretofore shown and is a policy not just to the stockholders and of which they oppose the continuance.

Within the period from July 1, 1901, to December 31, 1919 applicant has invested from earnings in additions and betterments, road extentions, retiring bonded debt, purchase of securities of other companies, and other items properly chargeable to capital
319 account the sum of $191,348,478.49 which has not been capitalized.

Applicant's net income applicable to dividends for the past ten and one-half years has been as follows:

Year ended June 30th.	Amount applicable.
1910	$13,308,746.18
1911	16,843,762.73
1912	14,106,753.78
1913	19,430,745.89
1914	17,114,407.14
1915	17,288,912.63
1916	25,628,590.57
1916*	18,250,254.69
1917**	28,009,001.57
1918**	15,947,881.56
1919**	16,561,229.51
Total, 10½ years	$202,490,286.25
Average per year	$19,284,789.17

*Six months, July 1 to December 31, 1916.
**Calendar year.

Notwithstanding the said large amounts of net income, which might have been distributed to the stockholders at the discretion of the directors, the average of all dividends paid to stockholders on the very low capitalization mentioned, for the period of July 1, 1901, to June 30, 1920, was only 8.51 per cent on the par of stock and on the property investment during the same time in excess of bonded debt 3.916 per cent.

The physical valuation now being carried on by the Bureau of Valuation of the Interstate Commerce Commission will support a value clearly in excess of the property investment above stated.

A policy clearly recognized in the Transportation Act, 1920 is to bring all the railways eventually to substantially the same principle of capitalization, which is to be as nearly as practicable the value of their respective railway operating properties, so that the cost of transportation as between competitive systems and as related to the value of the properties through which the service is rendered shall be the same so far as practicable, so that the railways can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon
320 the value of their respective railway properties.

Applicant's present interest and sinking fund charges amount approximately to $7,250,000 per annum, and the issue of $80,000,000 bonds as proposed would increase this amount by $4,800,000 per annum. During the five and one-half years from July 1, 1914 to December 31, 1919, the average annual net income yielded by applicant's railways, plus applicant's other income, was $17,324,703.73 in excess of the proposed new interest requirements, which is a large and safe margin above all dividends requirements in respect of the proposed total $170,000,000 of capital stock.

The annual net income available for dividends, as shown by the above statement, and present rate and traffic conditions in applicant's territory prove that by the most conservative estimate the additional securities proposed will not impair applicant's credit or its ability adequately to serve the public as a common carrier.

The unduly low capitalization of applicant as compared with other railroads in the same territory, and as compared with its property investment, has led to a misunderstanding on the part of the public as to the rate of return on fair value of property shown by applicant's earnings. The capitalization per mile in stocks and bonds, as of December 31, 1919, of the principal roads in applicant's territory is as follows:

Chicago, Milwaukee & St. Paul Railway Company	$60,16
Chicago & Northwestern Railway Company	47,919
Union Pacific Railroad Company	87,196
Atchinson, Topeka & Santa Fe Railway Company	55,857
Chicago, Rock Island & Pacific Railway Company	46,232
Missouri Pacific Railway Company	56,046
Northern Pacific Railway Company	65,488
Great Northern Railway Company	52,641
Chicago, Burlington & Quincy Railroad Company	31,164

321 The partial capitalization of applicant's surplus now proposed is just in relation to the capitalization of said other companies with reference to applicant's fair value and is in furtherance of the policy of the Transportation Act.

Wherefore, applicant prays for an order, (*a*) approving its proposed First and Refunding Mortgage to be dated February 1, 1921, to the First National Bank of the City of New York and Walter S. McLucas as trustees, to secure bonded indebtedness as provided therein; (*b*) as a necessary basis for the bonds provided by said mortgage, authorizing the issue by applicant of $60,000,000 additional capital stock and distribution of the same pro rata among its stockholders, thus transferring to capital account $60,000,000 of applicant's surplus; (*c*) authorizing the issue of $109,000,000 in 6% First and Refunding Mortgage Bonds, to reimburse applicant's treasury for moneys heretofore expended out of earnings in additions and betterments to applicant's railway operating property; $80,000,000 of said bonds, or the proceeds thereof, to be held in applicant's treasury free to be used for any lawful purpose, including dividend purposes, the balance of said bonds, $29,000,000 to be disposed of by the applicant only for future additions and betterments to its railway operating property after further application from time to time to this Commission. Chicago, Burlington & Quincy Railroad Company, by Hale Holden, President.

Four blue prints attached to said application, and a part thereof, being as follows:

EXHIBIT TO APPLICATION.

Chicago, Burlington and Quincy Railroad Company.

Classified Statement of Expenditures for Road, Equipment, and Permanent Improvements for the Period July 1, 1901, *to December* 31, 1919.

Consolidation key, I. C. C. classification Nos.			Classification.	Amount.
1901-1907.	1907-1913.	1913-1919.		
			Construction:	
1	1	1	Engineering	$1,650,994.13
2-3	2-3	2-3	Real Estate Right of Way and station grounds	19,250,506.39
4	4	3	Grading	23,257,145.60
5	5	5	Tunnels	757,862.19
6	6	6	Bridges, Trestles & Culverts	18,187,644.48
7-10	7-10	8-10	Ties, Rails and Other Track Materials	25,426,694.50
11	11	11	Ballast	3,600,328.21
12	12	12, 38	Track Laying & Surfacing	6,507,603.70
13	14	13	Right of way fences	510 196.60
14	15	15	Crossings and Signs	2,236,891.68
15	16	27	Interlocker & Signal Material	3,628,208.74
16	17	26	Telegraph & Telephone Lines	936,463.84
17	18	16	Station Buildings & Fixtures	5,108,700.51
18	20	20	Shops and Roundhouses	4,614,521.97
19	21	44	Shop Machinery & Tools	1,475,491.76
20	22	18	Water Stations	2,525,411.94
21	23	19	Fuel Stations	762,983.01
22	24	21	Grain Elevators	481,071.03

23	25	22	Storage warehouses	33,251.57
24	26	23-24	Docks & Wharves	115,993.88
25-26	27-29	4, 29-34, 45-46	Electric Light & Power Plants	452,606.62
28	19, 31	14, 17, 35	Miscellaneous structures	3,015,800.21
32	36	41	Cost of Road Purchased	997,783.13
29	43	73	Legal expenses	18,030.08
30	47	76	Interest & Discount	890,268.50
31	44-46-48	36, 39, 71, 72, 74-5, 17	General Expenses	712,282.10
..	32-35½	40, 43, 47	Miscellaneous Expenses	1,422,406.18
			Total	$128,577,142.55
			Equipment:	
1	37-38	51	Locomotives	$21,203,737.11
2-5	39	54-55	Passenger Cars	3,160,891.87
6	40	53	Freight Cars	32,167,130.83
7	13, 41	37, 57-58	Other cars	3,764,211.61
8	42	56	Floating equipment	3,719.86
9	..	..	Tools and Machinery	40,842.29
10	..	..	Air Brakes on Freight cars	153,100.00
			Total	$60,493,633.57
			Grand Total	$189,070,776.12

Correct:

C. I. STURGIS,
Comptroller.

Comptroller's Office, Chicago, Ill., Oct. 16th, 1920.

F. H. R./M. N.

(Here follow exhibits marked side folio pages 323, 324, and 325.)

326 DEFENDANTS' EXHIBIT 42.

[Received March 3, 1921. Nebraska State Railway Commission.]

Interstate Commerce Commission.

Finance Docket No. 1069.

In the Matter of Application of CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY for Approval of Its Proposed First and Refunding Mortgage and for Authority to Issue $60,000,000, par Value, of Capital Stock and $109,000,000, Principal Amount, of First and Refunding Mortgage Bonds.

Submitted January 4, 1921. Decided February 28, 1921.

Authority granted to issue $60,000,000 par amount of capital stock; and authority to issue $109,000,000 par amount of first and refunding mortgage bonds denied.

O. M. Spencer for applicant.

Charles W. Bunn for Northern Pacific Railway Company, a stockholder.

Ralph Budd and E. C. Lindley for Great Northern Railway Company, a stockholder.

Robert J. Frank, a stockholder, in person.

John E. Benton for National Association of Railway and Utility Commissioners.

Glenn E. Plumb, for organized railway employees.

Morton F. Culver and W. E. Trautmann, Assistant Attorneys General of Illinois, for State of Illinois and Attorney General of Illinois.

W. M. Hammond for State of Illinois and State Public Utilities Commission of Illinois.

Thomas L. Hall and Hugh LaMaster, Assistant Attorney General of Nebraska, for Nebraska State Railway Commission.

Benjamin C. Marsh for Farmers' National Council.

327 *Report of the Commission.*

By the COMMISSION:

The Chicago, Burlington & Quincy Railroad Company, hereinafter termed the applicant, a common carrier by railroad engaged in interstate commerce, seeks approval under section 20*a* of the interstate commerce act of its first and refunding mortgage and authority to issue $60,000,000 par amount of capital stock and $109,000,000 principal amount of first and refunding mortgage bonds. Application was made under oath, signed and filed on behalf of applicant by one of its executive officers, and notice thereof was given to and a copy thereof filed with the governor of each state in

which applicant operates. No objection to the granting of the application was made directly by any state authority other than the Nebraska State Railway Commission. Hearings were had and the Northern Pacific Railway and Great Northern Railway appeared in support of the application.

Applicant owns 8,948 miles, and operates 9,372 miles, of steam railroad extending from Chicago, Ill., southwesterly to St. Louis and Kansas City, Mo., Omaha, Nebr., and Denver, Colo., and northwesterly to St. Paul and Minneapolis, Minn., and Billings, Mont., with a line connecting Billings and Denver, another from Chicago to the Southern Illinois coal fields, and numerous other branches and feeders. It has extensive and valuable terminals in Chicago, St. Louis, Kansas City, Omaha, Denver and St. Paul, expensive bridges over the Mississippi, Missouri and Platte rivers, modern buildings and equipment, and a large and well established interchange of traffic with its connections. It operates in eleven states and serves a prosperous and well developed territory.

328 Applicant is an Illinois corporation and the railroads incorporated in other states which it now operates have been conveyed to it in fee simple. In 1901 the Great Northern Railway and the Northern Pacific Railway jointly acquired control of Applicant's system by the purchase of $108,000,000 or 96.79 per cent of its capital stock giving in payment therefor their joint 4 per cent bonds maturing in 1921 and pledging the stock acquired as collateral security.

Applicant has outstanding $110,839,100 par amount of capital stock and $174,040,800 principal amount of bonds of which $168,050,000 is in the hands of the public. The greater part of its funded debt is issued under three mortgages.

Its Nebraska extension mortgage is a lien upon 269.16 miles of road, and is secured by deposit of $23,494,000 of first mortgage bonds on 1201.84 additional miles of subsidiary companies which have conveyed their roads to applicant. There have been issued thereunder to reimburse the treasury for expenditures for extensions of lines $29,441,000 of 4 per cent bonds maturing in 1927, sold at prices ranging from 84.5 to 95.12, netting applicant $26,843,383.40. Discounts thereon of $2,597,616.60 were charged to construction. Of these bonds $20,024,000 are outstanding, $18,294,000 in the hands of the public and $1,730,000 in applicant's treasury.

Applicant's Illinois division mortgage covers 1646.4 miles of road. There have been issued thereunder $85,000,000 in bonds maturing in 1949, $56,000,000 to be used to retire prior bond issues, the remainder to reimburse the treasury, $15,000,000 being for expenditures for construction and acquisition of roads before July 1, 1899, and $14,000,000 being for additions and betterments subsequent to that date. Some $50,835,000 of these bonds bearing interest

329 at 3.5 per cent were sold at prices ranging from 75 to 103.5 netting applicant $45,992,235. Discounts thereon of $1,088,975 were charged to construction and of $3,753,790 to profit and

loss. Some $34,165,000 of 4 per cent bonds were sold at from 98.5 to 104.5 netting $35,228,505. Discounts thereon of $9,880 were charged to construction and $1,073,385 of premiums were credited to profit and loss. Of the 3.5 per cent bonds $384,000 and of the 4 per cent $189,000 are in applicant's treasury. The balance of both issues are in the hands of the public.

A general mortgage maturing in 1958 covers substantially all of applicant's railway property existing in 1908 being a first lien on more than 5,000 miles of road. It is so limited that not over $300,000,000 can be outstanding thereunder at any one time, and that bonds can not bear over 5 per cent interest. There have been issued thereunder and are outstanding $65,247,000 of 4 per cent bonds which were sold at from 91.5 to 100 netting applicant $62,44-,450. Discounts thereon of $2,602,550 are being *amortized* from income during the life of the bonds. Before the passage of the transportation act, 1920, the Public Utilities Commission of Illinois authorized the issuance of $121,378,000 of general mortgage 4 per cent bonds; of this amount $2,252,000 have been issued, leaving $119,126,000, of which $9,873,000 are in applicant's treasury and $109,253,000 remain unexecuted.

The investment in road and equipment as shown in applicant's accounts is $503,745,837.57. Its outstanding securities amount to $284,879,900, leaving a book surplus of $218,865,937. Ap-
330 plicant contends that it has an actual surplus materially in excess of that figure which does not take into account investments in property other than road and equipment, and does not include any sum in consideration of its guaranty under section 209 of the transportation act, 1920. It asserts that the value of its physical property upon the basis provided in section 19*a* of the interstate commerce act amounts to $572,800,000 or about $70,000,000 more than the total shown as investment in road and equipment. Depreciation on its equipment has been charged to the amount of $48,514,239.62. Applicant states that since July 1, 1901, it has invested out of earnings $189,070,776.12 in additions and betterments to its property only a small portion of which was expended for non-revenue producing assets; that *is* has in addition used earnings to retire bonds expending a total of $191,348,478.49, properly chargeable to capital account, no part of which has been capitalized. During that time applicant has increased its mileage from 7,600 to 8,900 miles. The total mileage owned and operated has increased from 7,700 to 9,300 miles. Second track has been increased from 425 to 1,000 miles and yard track and sidings from 1,700 to 3,200 miles. The tons of traffic handled have increased from 17,000,000 to 49,000,000; the ton miles from 3,800,000,000 to 14,000,000,000; the density ton miles per mile of line from 582,000 to 1,483,000; the trainload from 200.43 to 722.19 tons; the carload from 12.5 to 26.5 tons. Applicant has during this time reduced its funded debt and has securities now in the hands of the public totaling $31,164 per mile of road.

Objectors do not deny the existence of property value used and useful in rendering the public service materially in excess of
331 applicant's present capitalization, and do not question the nature of the expenditures involved. They question the right of a public service corporation to declare dividends from invested surplus acquired from earnings during a period when the stockholders were receiving regularly a fair dividend upon the outstanding capital.

Applicant's net income applicable to dividends for the past 10.5 years has been as follows:

1910	$13,308,746.18
1911	16,843,762.73
1912	14,106,753.78
1913	19,430,745.89
1914	17,114,407.14
1915	17,288,912.63
1916*	43,878,845.26
1917	28,009,001.57
1918	15,947,881.56
1919	16,561,229.51
Total 10.5 years	202,490,286.25
Average per "	$19,284,789.17

Notwithstanding this large net income available for distribution among the stockholders the average of all dividends paid from 1901 to 1920 was 8.51 per cent upon the abnormally low capitalization and 3.916 per cent upon the average property investment in excess of all outstanding bonds.

There is no proof that this income is the result of excessive rates. Traffic has been carried by applicant at rates controlled by state or interstate regulatory bodies, substantially the same as those applicable over competing lines. Nor is there any proof that the total return upon the fair value of applicant's property has been excessive. Applicant's right to capitalize $119,000,000 of the surplus has in fact been recognized by the public utilities commission of Illinois, the state of its incorporation, under express statutory provision. A five year statutory limitation prevented that body from considering surplus accumulated during an earlier period.

332 Applicant points out that its present financial structure is inadequate for present and future needs. Its Nebraska extension and Illinois division mortgages are closed, and its general mortgage so limited that its use is impractical under present conditions. The execution of a new mortgage subject to these existing liens would be futile. Applicant now proposes to close the general mortgage without issuing further bonds under it, and to execute a

*18 months' period due to change in report year.

fifty-year first and refunding mortgage to secure coupon bonds to be issued in series at interest rates, and redeemable at times, and on terms, to be determined by the directors at the date of issuance, subject to our approval.

Under the general mortgage, $175,000,000 of bonds were reserved to refund $168,501,000 of prior lien bonds at premiums not exceeding $6,499,000; and bonds were issuable thereunder as follows: $2,000,000 to finance such refunding, $45,000,000 to reimburse for expenditures before 1908, and the remainder for future additions and betterments. It is stated that only $78,000,000 could be issued for the last mentioned purpose. But there is evidence that only $139,744,000 of such bonds are now reserved for refunding purposes and the amount necessary therefor would seem to be even less, of the original $169,501,000 of prior lien bonds, $46,728,000 have matured and presumably been retired, leaving $121,773,000, of which there is reason to believe $12,268,000 have been retired. If so the only remaining prior liens are the Nebraska extension and Illinois division mortgages, to refund which at maturity, par for par only $102,800,000 would be needed. But the aggregate amount of bonds now
outstanding under those mortgages is $105,024,000. There-
333 fore, if all prior lien bonds have been, or shall be, refunded at par without expense to applicant, $129,729,000 of bonds would be issuable now under the general mortgage which, with the $65,247,000 outstanding and $105,024,000 reserved for refunding, would close said mortgage.

Applicant points out that bonds under its general mortgage could not bear more than 5 per cent interest and if they could be marketed at all would have to be sold at heavy discount, and that they would not be redeemable before 1958. It is shown that the amount of bonds issuable under that mortgage would not meet applicant's needs for additions and betterments at the current rate beyond 1933, and if the proposed dividends were paid would not meet requirements beyond 1929. It is contended that the proposed financial program would better applicant's credit and strengthen its position.

Authority is sought to issue $109,000,000 of first and refunding mortgage bonds at 6 per cent, $29,000,000 thereof to be used for future additions and betterments subject to our approval, $80,000,000 thereof to be held free in applicant's treasury for any lawful use including issuance as dividends. It appears that they would be used solely for dividend purposes and if authorized would be distributed among the stockholders.

Applicant calls attention to the necessity of refunding on July 1, 1921, $215,227,000 of its controlling road's joint 4 per cent bonds given in payment for its stock, and points out that practically all of its proposed bond issue if authorized would be available to those roads for use in meeting that obligation, thus materially reducing their fixed charges. It points out that as the controlling roads are its principal stockholders it is their foregoing of dividends which has
produced its invested surplus. It contends that its own in-
334 crease in fixed charges would be offset by the material advantage resulting to its established connections. It shows that

the proposed financing would slightly reduce its ratio of bonds to stock, placing it substantially upon the basis of 1.5 to 1; and would not so increase fixed charges as to impair applicant's ability to serve the public.

Objectors contend that applicant should not be permitted to increase its fixed charges without a showing of resulting benefit to applicant. The issuance of the proposed bonds at this time would materially increase applicant's interest burden without apparent necessity. The interest rate at the time of the above-mentioned expenditures from surplus was not in excess of 4 per cent. Authorization of bonds at that rate at the present time would seem inexpedient. Division of that part of the surplus not needed for ordinary surplus purposes by means of stock appears more in accord with applicant's and the public's welfare.

Both the wisdom and legality of the joint acquisition and ownership of the Burlington by the Great Northern and the Northern Pacific are questions foreign to this proceeding and therefore require no consideration on this occasion.

While we do not minimize the advantages derived by applicant from its connections with the Northern lines we are not convinced that the continuance of those connections is dependent upon the issuance of the proposed bond dividend. The general advantages of minimizing fixed charges in refunding the joint fours are apparent, but we can not share applicant's apprehensions relative thereto. The northern lines enjoy a position relatively favorable to financing such a refunding. The value back of applicant's stock renders it desirable collateral security. No evidence has been introduced
335 which convinces us that the refunding could not be accomplished at a reasonable rate by the issuance of bonds of the Great Northern and Northern Pacific secured by mortgage and the pledge of applicant's stock.

Confusion has been injected into this case by the failure to distinguish between the issuance of bonds to reimburse the treasury from the proceeds thereof for expenditures for additions and betterments, and the issuance of bonds from invested surplus for dividend purposes. We cannot accept applicant's argument which finds in the Illinois Commission's approval of the issuance of 4 per cent or 5 per cent bonds to reimburse applicant's treasury for expenditures for additions and betterments, a sanction of a dividend of 6 per cent bonds. It is true that body's authorizations contained no express prohibitions against such a dividend, but each of its orders provided that the bonds should be sold and a majority of the orders specified sale for cash; all required that the proceeds be applied to specified purposes. One order made optional the pledge of the bonds. The Illinois statute enumerated the purposes for which a public service company might issue securities without including the issuance of dividends, and expressly stated that securities might be issued for no other purpose. Nor is it certain that the question before the Illinois Commission was wholly analogous to that here presented, for the approval of a bond issue during a normal period differs materially from approval of an issue at an abnormal rate at an abnormal

time when the only material advantage anticipated inures to parties other than the applicant.

336 Applicant seeks authority to issue $60,000,000 additional capital stock as a necessary basis for the proposed mortgage under which the aggregate amount of such bonds can not exceed three times the outstanding capital stock. It is proposed to issue such stock as a dividend.

If applicant's petition is granted in full it is urged that there will remain a corporate surplus of $101,781,197; that this amount would be adequate to meet applicant's emergency needs, support its borrowing power, afford insurance against obsolescence, minimize short term financing, and serve as a general financial balance wheel. Allowance should be made, however, pending the valuation of applicant's system, for shrinkage of book values, so that the adjusted capitalization will not leave applicant with an inadequate actual surplus.

The evidence establishes (1) that the Chicago, Burlington & Quincy Railroad has a great uncapitalized surplus; (2) that the present capitalization is far below the actual investment or any fair value for rate making purposes which we may subsequently fix under the Valuation Act, Section 19*a* of the Interstate Commerce Act; (3) that the increase in capitalization which would follow the grant of this authority would still leave the total capitalization of the Burlington below the actual investment and the probable fair value of the property devoted to the public service; (4) that the remaining uncapitalized surplus would be sufficient to serve the purposes for which a surplus should be accumulated; and (5) that the present financial structure of the Burlington is obsolete and inadequate and that a new form of mortgage and a larger stock base to meet the requirements of statutes governing investments by saving institutions

337 in various states are necessary.

We find that the proposed issue of $60,000,000 capital stock by the Chicago, Burlington & Quincy Railroad Company as a dividend (*a*) is for a lawful object within its corporate purpose, and compatible with the public interest, which is necessary, appropriate for, and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service; and (*b*) is reasonably necessary and appropriate for such purpose; but that applicant has not justified an authorization of the issuance as dividends of mortgage bonds against its surplus and that authority therefor should be denied. If applicant desires, we shall give consideration on the present record to an application to issue bonds for appropriate purposes other than dividends.

The question of a proper return on the fair value of property devoted to the public use is not pertinent. It is not before us. No one questions the right of owners to compensation for sacrifices made in foregoing dividends. The denial in this case extends only to the issuance of a bond dividend by a railroad which has no need for the bonds, and which can advantageously issue all the stock reasonably required for its needs. The more adaptable form of mortgage which

the applicant desires can be provided without the issuance of a bond dividend.

An appropriate order will be entered.

338 Thereupon the defendants rested.

In rebuttal the Chicago, Burlington & Quincy Railroad Company offered and there was received and read in evidence C. B. & Q. Exhibit 31, which is as follows:

C., B. & Q. Exhibit 31.

"I, Pollock Parmele, do state on oath that I secured affidavits from W. C. Hill, county assessor in Perkins County, Nebraska, on November 8, 1922; that he read affidavit after we had talked the matter over carefully; that he signed three copies of said affidavit; and in my opinion he knew fully what he was signing.

Further, that I talked to Madge Disbrow, County Assessor for Furnas County, Nebraska, on November 9, 1922, with reference to making affidavit as to intentional undervaluation of property in Furnas County; that I read affidavit to her and she said it was correct and signed it in my presence, signing three copies."

339 C., B. & Q. Exhibit 32.

Thereupon the plaintiff offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 32, being all of page 4 of the report to its stockholders December 31, 1921, same being as follows:

Sixty-eighth Annual Report.

Chicago, January 2, 1922.

To the Stockholders of the Chicago, Burlington & Quincy Railroad Company:

The following is a report of your Board of Directors for the year ended December 31, 1921.

Mileage.

Mileage of Road Operated on December 31, 1921.

State.	Line owned.			Operated under lease or contract.	Total mileage operated.
	Main line.	Branches and spurs.	Total.		
Colorado	214.11	180.25	394.36	34.97	429.33
Illinois	946.06	745.04	1,691.10	113.85	1,804.95
Iowa	371.68	993.44	1,365.12	73.44	1,438.56
Kansas	12.71	246.55	259.26	.91	260.17
Minnesota	23.61	.....	23.61	14.84	38.45
Missouri	593.59	528.68	1,122.27	13.19	1,135.46
Montana	134.38	.....	134.38	49.45	183.83
Nebraska	1,364.44	1,485.09	2,849.53	22.37	2,871.90
South Dakota	48.88	229.74	278.62	.....	278.62
Wisconsin	228.46	.....	228.46	.53	228.99
Wyoming	572.71	121.08	693.79	29.64	723.43
Total	4,510.63	4,529.87	9,040.50	353.19	9,393.69

Line Owned.

State	Miles of road.	Second track.	Third track.	Fourth track.	Yard track and sidings.	Total.
Colorado	394.36	.....	.....	....	144.93	539.29
Illinois	1,691.10	462.76	42.40	5.41	1,105.64	3,307.31
Iowa	1,365.12	243.55	.....	....	353.47	1,962.14
Kansas	259.26	.....	.....	....	25.32	284.58
Minnesota	23.61	.....	2.25	....	39.91	65.77
Missouri	1,122.27	111.61	.....	....	440.87	1,674.75
Montana	134.38	.....	.....	....	37.61	171.99
Nebraska	2,849.53	32.34	.....	....	780.15	3,662.02
South Dakota	278.62	.....	.....	....	65.75	344.37
Wisconsin	228.46	130.52	.....	....	76.31	435.29
Wyoming	693.79	3.66	.....	....	249.87	947.32
Total	9,040.50	984.44	44.65	5.41	3,319.83	13,394.83

The above shows an increase of 3.85 miles in both "Road Owned" and "Line Operated." This increase was caused by changing the classification of the "Gale cut-off," at Galesburg, Illinois, from "Yard Track" to "Main Line."

340 The plaintiff then offered and there was received and read in evidence, without objection, its Exhibit 33, being page 454 of the report of the Nebraska State Railway Commission for 1911, same being as follows:

C., B. & Q. Exhibit 33.

"Department Report Covering the Value of the Physical Elements Lying Within and for the State of Nebraska of the Following Properties:

Chicago and North-Western Railway.
Chicago, Burlington and Quincy Railroad.
Chicago, Great Western Railroad.
Chicago, St. Paul, Minneapolis and Omaha Railway.
Chicago, Milwaukee and St. Paul Railway.
Atchison, Topeka and Sante Fe Railway.
Fremont Stock Yards and Land.
Illinois Central Railroad.
Wabash Railroad.
Nebraska City Union Stock Yards.
Morton-Gregson.
Omaha Bridge and Terminal Railway.
Sioux City Bridge.
Chicago, Rock Island and Pacific Railway.
Missouri Pacific Railway.
St. Joseph and Grand Island Railway.
Union Pacific Railroad.
Union Stock Yards of Omaha.
All Properties in State."

341 The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 34, being page 456 of the Fourth Annual Report of the Nebraska State Railway Commission, for 1911, above referred —, which is as follows:

C., B. & Q. Exhibit 34.

"Physical Value for July 1, 1909, of Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850.00. Miles of Track, 3,483.38.

	Department valuation.	
	Repro. new.	Present.
1. Right-of-Way and Station Grounds	$13,886,435.21	$13,886,435.21
2. Real Estate	256,882.27	256,882.27
3. Grading	21,154,792.42	21,154,792.42
4. Tunnels	118,639.24	105,188.64

	Department valuation.	
	Repro. new.	Present.
5. Bridges, Trestles and Culverts	7,230,256.05	5,101,827.81
6. Ties	9,356,357.02	5,677,401.57
7. Rails	11,243,440.47	8,080,844.96
8. Frogs and Switches	327,574.44	219,646.34
9. Track Fastenings and Other Material	2,195,173.56	1,522,748.41
10. Ballast	4,281,969.18	3,922,732.15
11. Track Laying and Surfacing	2,596,943.97	2,596,943.97
12. Roadway Tools	112,959.87	68,276.99
13. Fencing Right-of-Way	815,970.97	552,340.26
14. Crossings and Signs	635,056.86	472,765.56
342		
15. Interlocking and Other Signal Apparatus	171,728.00	142,883.00
16. Telegraph and Telephone Lines	724,411.32	544,149.95
17. Station Buildings and Fixtures	2,611,764.00	1,892,929.00
18. General Office Buildings	209,835.00	167,427.00
19. Shops, Engine Houses and Turntables	1,902,446.00	1,357,015.00
20. Shop Machinery and Tools	635,459.23	373,594.22
21. Water Stations	1,073,635.00	797,282.00
22. Fuel Stations	416,048.00	290,291.00
23. Grain Elevators	10,653.00	8,653.00
30. Miscellaneous Structures	952,517.00	658,504.00
31. Adaptation and Solidification of Roadway	3,828,856.00	3,828,856.00
32. Engineering and Superintendence	2,712,705.00	2,712,705.00
33. Steam Locomotives	3,846,837.72	2,571,619.33
35. Passenger Cars	1,896,527.93	1,089,690.18
36. Freight Cars	8,190,240.36	5,550,980.21
37. Work and Floating Equipment	649,337.90	472,059.60
38. Rent and Repairs of Equipment	307,800.00	307,800.00
39. Inspection and Purchase of Equipment	145,829.00	145,829.00
40. Transportation of Material	960,000.00	960,000.00
41. Stores and Supplies for Nebraska	1,563,721.00	1,563,721.00
42. General Expenditures—Contingencies	14,982,373.93	14,982,373.93
Grand Total	$122,005,176.92	$104,037,188.98

343 Present Value is found to be by this report 85.27% of Reproduction Value New.

NOTE.—For estimates covering working sections 21-45-46 claimed and included by the owners of this property, but excluded here, see supplemental report."

Plaintiff then offered and there was received and read in evidence without objection, C. B. & Exhibit 36, being the title page to the 1913 Annual Report of the Nebraska State Railway Commission, and pages 521 to 525 inclusive of that report, and pages 528 and 529 thereof, as follows:

C., B. Q. EXHIBIT 36.

(Title Page.)

"Sixth Annual Report of the Nebraska State Railway Commission to the Governor.

Year Ending November 30, 1913."

(Pages 521 to 525, Inclusive.)

"Physical Valuation Steam Railroad Properties for 1911-12.

Addendum.

To find a present value or condition by applying depreciation to be determined reproduction cost new of all accounts claimed to be subject to such action.

Formula (No. 2).

Items 1 and 2 carry at..... 100%

344 Item 3, unless embracing structural elements subject to deterioration, carry at..... 100%

Items 4 to 10, inclusive, apply approved depreciation.

Item 11 apply the average ratio found for total of accounts 6, 7, 8, 9, 10 and 12.

Items 12 to 30 inclusive apply approved depreciation.

Item 31 carry at..... 100%

Item 32 reduce three-fifths by the same ratio as found for the average accounts 2 to 30, inclusive; and carry remaining two-fifths at 100%

Items 33 to 37 inclusive apply approved depreciation.

Item 38 apply the average ratio found for total of accounts 3 to 30 inclusive.

Item 39 apply the average ratio found for total of accounts 33 to 37 inclusive.

Item 40 apply the average ratio found for total accounts 3 to 30 inclusive.

Item 41 carry at..... 100%

Item 42 four-fifths of the organization, administration and legal carry at..... 100%

One-fifth remaining of organization, administration, and legal expenditures, together with printing, insurance on property, taxes, and interest on money during construction reduce in ratio found for the average of all items 1 to 40 inclusive except 31.

After having found that outlined immediately above, make a summary of the totals of all accounts 1 to 40 inclusive, except 31, and reduce contingencies according to the ratio found between the resultants.

Argument.

Supporting Formula No. 2 from which is derived and presented herewith statements setting out present value of steam railroad properties, and modifying methods of 1909 now of record alto-
345 gether for consideration.

All appraisals suggested for consideration under public regulation must be predicated essentially upon ideal principles. To undertake to set out a modification or make amendments to that which has obtained heretofore at once introduces many questions, some of which it may be advisable to mention here, but the discussion of the same because of desired brevity should be very limited and in some cases entirely omitted because the characteristics are well known. Therefore, only the salient matters concerning some of the prime steps will receive mention.

One of the first duties of a valuator in determining a physical present value or state according to accepted methods is to apply a proper measure of depreciation to the established reproduction cost new. This involves as a general plan the influencing of each item of the inventory credibly and scientifically and sometimes arbitrarily based on judgment, in order to find the desired conclusion. Thus it is agreed manifestly the solution comprehends that which is ideal in accounting, and the hypothetical findings are expected and desired to coincide with the realized depreciation if spread over a considerable period of years and under normal conditions.

A number of steps in accepting principles to be adhered to presents many times not altogether agreed to separation of accounts;
346 but which if taken altogether in the make-up of an extended history of a property should make little difference in the final figures. To illustrate, amortization of certain elements dissipating and re-appearing, versus capitalization; what shall be embraced and understood as maintenance costs, versus depreciation; and straight line depreciation versus that estimated less interest on an assumption of being a fund partly loaned. To assist in disentangling some of the controversies which might appear in these matters, and give a more uniform understanding and practice, certain classifications of accounts have been prescribed and accepted resulting in much progress in standardization, and which has been held in mind in organizing valuations.

In spite of the advances in the methods of appraisals, there remains a considerable of oscillating about pivotacable points, and therefore there is commanded for consideration a review from all claimed

rational angles. Such demands may arise because of peculiarities incident to one estate where issues are raised, that are not to be found in others. It is reasoned that fallacious treatments may thus be discovered, even to the extent of inaccuracies in things that are basic. Valuations are intended to be so found to avoid as near as possible such criticisms, and therefore any modified principles adopted may as in this case show different figures under different plans of present condition, whereas if a question of rate of decadence is asked for, a careful study will reflect no considerable variance. Thus is evolved the suggestion and use of the appraisal made.

347 In establishing a valuation to be employed in the public regulation of utilities, and which is not considered complete unless a reproduction cost new is set up together with a so-called present value or state, which latter is generally understood to represent relatedly the remaining age of the dollar invested, the same is and may be expected to be considered under two distinct phases with certain modifications with the ramified associations of each, and from which pertinent deductions may be drawn.

One premises may be that the reproduction cost new shall represent the proper invested cost upon which to predicate earnings and other pertinent matters. Shall this be accepted, then the conclusions as to present value would serve but two attending purposes, viz. that of setting out the extent of the physical decay for the study of probable serviceable life, and that of comparably measuring a required depreciation reserve fund.

Another basis may be that the present state of the property thus measured in money value remaining, may be made fundamental as the proper amount upon which to base earnings, in lieu of the former, and which obviously would give greater importance to the latter mentioned figures, viz: that of present value. In case such should obtain the related attributes already outlined in the first instance together with additional ones would still remain.

It is expected here not to argue over the various principles adopted into the 1909 appraisal following the above outline, but only

348 set out certain reasons why changes for certain items have been suggested for study. Some of the accounts in the classification cannot rationally be said to be affected by depreciation, while others as treated heretofore as not lessening in wirth when in the present state, have been pointed to for reasons thought worthy of consideration as liable to the action here mentioned. Therefore these only will receive any attention.

11. Track laying and surfacing is an item that may be claimed as related to the material accounts of 6, 7, 8, 9, 10 and 12, and being largely the labor placing and using the said material is given the same ratio as that found for the average of the several elements just mentioned.

32. Engineering and superintendence, which upon close analysis seems to present a dual situation, in that a certain portion of the result of the expenditure becomes emblazoned upon the records and the earth's surface permanently without deterioration or loss, while

the remaining portion may be directly related to the structural elements in association. This account generally approximates a cost of $1,000.00 per mile of roadway. The enduring portion just defined approximates a cost of $400.00 per mile of roadway, or two-fifths of the total, while the remaining three-fifths is depreciated in measure found for the average of all of the structural elements in the roadway, viz: items 3 to 30 inclusive.

349 38. Rent and repairs of equipment during construction can be said to be related to all of the structural items of the roadway, viz: 3 to 30 inclusive, and is lessened in measure as found for the average of the total of the same.

39. Inspection and purchase of equipment may be claimed in coincidence to accounts 33 to 37 inclusive, and is depreciated according to the average of the total of the said items.

40. Transportation of material can be said to be related to all of the structural elements of the roadway, viz: 3 to 30 inclusive, and is lessened according to the average of the same.

42. General expenditures—contingencies. It may be contended that this account is affected by certain lessening of worth related directly or not to certain or all of the other items comprising the inventory. A careful study seems to develop the following, based upon the principles outlined.

Organization, administration and legal expenditures seems to present in certain measure an element not affected by decadence, and may be said to be in part unaffected and enduring and which is the mental concept of the organized estate, somewhat akin to that described for a portion of item 32 above. No other means at hand has been discerned than to arbitrarily fix the amount non-depreciating as four-fifths of the total, at the time considering that the remaining one-

fifth is in character experimental and of a departing nature

350 and in relationship to the physical machine. This remaining one-fifth is lessened by the ratio found for all of the items 1 to 40 inclusive except 31.

Printing, insurance on property, taxes, and interest on money during construction can be claimed as related to the physical machine comprising items 1 to 40 inclusive, except 31, and therefore the present value is measured by the average of the said items.

Contingencies, being an element related to all of the foregoing except item 31, seems to be correctly treated by depreciating in measure found for the average of all of the foregoing except account 31.

To avoid any misunderstanding as to the foregoing, it seems proper to definitely state that intangible values of every kind in accordance with the department's interpretation are entirely excluded from consideration, and especially where bases are mentioned that might seem to involve, and may do so, investment or property beyond the physical, no such elements are reasoned as being embraced in the discussion."

Pages 528 and 529 of the above report of Nebraska State Railway Commission being as follows:

Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway 2,850. Miles of track, 3,528.79.

Subject.	Department's valuation.		
	Reproduction cost new.	Present value.	Present value, new formula.
1. Right-of-Way and Station Ground:			
(*a*) Mkt. Val. with Acquirement	$9,837,330	$9,837,330	.....
(*b*) Inc. Acq. and Severance	16,050,376	16,050,376	.....
2. Real Estate	285,589	285,589	.....
3. Grading	21,366,043	21,366,043	.....
4. Tunnels	118,639	103,639	.....
5. Bridges, Trestles and Culverts	7,574,483	4,997,015	.....
6. Ties	10,592,778	6,254,502	.....
7. Rails	12,170,086	8,952,906	.....
8. Frogs and Switches	368,283	252,608	.....
9. Track Fastenings and Other Mat'l	2,678,305	1,947,975	.....
10. Ballast	4,657,953	4,159,160	.....
11. Track Laying and Surfacing	3,247,233	3,247,233	2,297,093
12. Roadway Tools	128,292	76,975	.....
13. Fencing-Right-of-Way	822,580	558,781	.....
14. Crossings and Signs	684,533	519,124	.....
15. Interlocking and Other Signal Apparatus	242,799	210,230	.....
16. Telegraph and Telephone Lines	967,033	570,335	.....
17. Station Buildings and Fixtures	2,918,994	2,207,699	.....
18. Gen'l Office Buildings and Fixtures	211,185	168,948	.....
19. Shops, Engine Houses and Turn-tables	2,500,904	1,991,711	.....
20. Shop Machinery and Tools	918,610	655,749	.....

21. Water Stations	1,158,490	874,909	.....
22. Fuel Stations	434,357	313,458	.....
23. Grain Elevators	10,653	8,629	.....
30. Miscellaneous Structures	993,800	684,975	.....
31. Adaptation and Solidification	3,808,886	3,808,886	.....
32. Engineering and Superintendence	2,922,683	2,922,683	2,579,677
33. Steam Locomotives	4,833,753	3,168,980	.....
35. Passenger Cars	2,353,394	1,385,613	.....
36. Freight Cars	9,206,643	6,341,293	.....
37. Work and Misc. Equipment	872,109	583,513	.....
38. Rent and Repairs of Equipment	293,037	293,037	235,719
39. Inspection and Purchase of Equipment	172,659	114,794	.....
40. Transportation of Men and Mat'l: (Miscellaneous)	1,208,400	1,208,400	972,037
41. Stores and Supplies for Nebraska	2,470,815	2,470,815	.....
42. General Expenditures—Contingencies:			
(*a*) Mkt. Val. Land only	15,698,996	15,698,996	12,635,459
(*b*) Inc. Acq. and Sev. Rt.-of-Way	16,606,101	16,606,101	13,544,181
Grand Totals:			
(*a*) Mkt. Val. Land only	$128,730,333	$108,242,493	$103,592,129
(*b*) Inc. Acq. and Sev. Rt.-of-Way	135,850,484	115,362,644	110,713,897
(*a*) Per Mile of Roadway	41,169	37,980	36,348
(*b*) Per Mile of Roadway	47,667	40,478	38,847
(*a*) Per Mile of Track	36,480	30,674	29,356
(*b*) Per Track Mile	38,498	32,692	31,374

This statement excludes the property of the so-called abandoned lines.

Chicago, Burlington & Quincy Railroad Company's Property.—Continued.

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Physical Valuation of Steam Railroads.

July 1, 1911.

Chicago, Burlington & Quincy Railroad Company's Property.

Miles of Roadway, 2,850. Miles of Track, 3,528.78.

Supplemental Report Covering So-called Abandoned Lines.

Subject.	Department's valuation.		
	Reproduction cost new.	Present value.	Present value, formula No. 2.
1. Right-of-way and Station Grounds:			
(*a*) Mkt. Val. with Acquirement	$108,315	$108,315	.....
(*b*) Including Acq. and Severence	186,027	186,027	.....
3. Grading	206,729	206,729	.....
5. Bridging	2,079	1,630	.....
32. Engineering and Superintendence	25,802	25,802	25,768
42. General Expenditures—Contingencies:			
(*a*) Mkt. Val. Land only	39,395	39,395	39,344
(*b*) Inc. Acq. and Sev. Right-of-Way	45,213	45,213	45,166

Grand Totals:			
(*a*) Mkt. Val. Land Only	$382,319	$381,871	$381,785
(*b*) Inc. Acc. and Sev. Right-of-way	465,850	465,401	465,330

Total Figures for the Chicago, Burlington & Quincy Rail road Company's Property, Including the Above So-called Abandoned Lines.

Grand Totals:			
(*a*) Mkt. Val. Land Only	$129,112,652	$108,624,364	$103,973,914
(*b*) Inc. Acq. and Sev. Rt. of way	136,316,334	115,828,045	111,179,227

353 C., B. & Q. Exhibit 37.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 37, being the title page of the Seventh Annual Report of Nebraska State Railway Commission, as follows: "State of Nebraska. Office of the Nebraska State Railway Commission. Lincoln, Nebraska, December 1, 1914. Honorable John H. Morehead, Governor of Nebraska. Sir: In compliance with the requirements of subdivision (*o*), Section 2 of the Railway Commission Act, we have the honor to submit herewith our Seventh Annual Report, covering the year ending November 30, 1914. Very respectfully, Henry T. Clarke, Jr., Chairman, Thomas L. Hall, Commissioner, H. G. Taylor, Commissioner. Attest; A. B. Allen, Secretary."—together with page 634 of the report, which shows the physical valuation of the C. B. & Q. property in Nebraska as of July 1, 1913, excluding the factor of the cost of acquisition and the severance of right-of-way. The- found Reproduction Cost New to be $130,805,001. and Present Value $109,888,797., and according to their new formula $104,994,348., including acquisition cost and severance of right-of-way, Reproduction Cost New $137,972,854, Present Value $117,056,650., Present Value new Formula, $112,163,823.

The plaintiff then offered and there was received and read in evidence, without objection, C. B. & Q. Exhibit 38, being the affidavit of Mr. Byron Clark, one of the attorneys in the case who was ill and in the hospital and could not participate further herein, which affidavit is as follows:

354 C., B. & Q. Exhibit 38.

"I, Byron Clark, do state on oath that I represented the Chicago, Burlington & Quincy Railroad Company in hearing before the Nebraska State Railway Commission in 1911 and 1912 on physical valuation of railroads; that all figures furnished the Commission by the Railroad Company were on the basis of reproduction new valuation in every particular; that the total of $200,624,576.79 reported as contended for by said railroad company, which is shown on page 472 of Fourth Annual Report of the Nebraska State Railway Commission plainly shows same as being "Respondent's Valuation Reproduction New"; that said figure for reproduction cost new was refused by the Nebraska State Railway Commission, and was never considered or used by said commission, the public, or shippers as a proper valuation upon which rates might be predicated or upon which the railroad company should be permitted to earn compensation; that in figuring reproduction cost new on item I, Right of Way and Station Grounds, $25,177,999.71, actual market value of land on July 1, 1909, was increased over 2½ times to arrive at the cost of acquisition and severance of land by railroad company for railroad uses; that under item 42, General Expenditures, $67,670,576.79, was figured Contingencies of $12,873,610.08 which was speculative and only considered in reproduction cost new; taxes of $3,004,517.59 for 4 years during reproduction period; commissions of $4,232,128.64

and organization of $2,124,145.66 in connection with reproduction cost; and interest of 6% for 4 years of $40,628,436.83 on money used during period of reproduction before earnings would commence; that no depreciation of any character was figured on any of the 42 items included in these figures."

At this time, being the hour of 12.30 P. M., a recess was taken until two o'clock P. M. the same day, Tuesday, December 19, 1922, at which time further proceedings were as follows:

Evidence adduced on the part of the Northwestern Lines.

At the hour of 5.30 P. M., the same day, an adjournment was taken until the following day, Wednesday, December 20, 1922, at 9.30 o'clock A. M., at which time the court convened and trial resumed. Present as before. Further proceedings as follows:

Amongst other colloquies is the following, Judge Munger addressing Mr. Root, Solicitor for plaintiff:

COLLOQUY BETWEEN COURT AND COUNSEL.

"Judge Munger: Have you set out in your chart the percentage of true value that the assessment is by each of those four methods? (Referring to Morgan's affidavit.)

Mr. Root: No.

Judge Munger: Your estimates run from ninety five million to one hundred and twenty-two million. I wonder if you set out what percentage of that value the year's total assessment in Nebraska was?

Mr. Root: * * * So again we want our position to be plainly understood that we are standing on the valuation of $108,000,000." * * *

"Mr. Lamaster: * * * I understand the Burlington has sent vouchers to various county treasurers for 60 per cent——

Mr. Root: 65 per cent." * * *

"Mr. Root: Is there any question in the minds of the court that the Burlington has offered to pay whatever the court finds?

Judge Munger: I have the impression that you made a general offer to pay whatever the court finds.

Mr. Root: On page 38 of the bill, after various allegations, it says:

'and plaintiff avers that it is willing to, and will, pay such lawful taxes as are levied upon said last aforesaid sum or value per mile or upon such other sum as this court may determine to represent the fair and equitable taxable value of its property per mile as compared to the tax burdens imposed upon taxable land in said state.'

now if there is any question, while we have offered 65 per cent, of course whatever the court says is the actual amount, if more than that, we cheerfully——

Judge Munger (interrupting): You make a general offer to pay whatever the court finds?

Mr. Root: Yes."

Testimony closed.

357 Whereupon an adjournment was taken until nine-thirty o'clock A. M. the following day, Thursday, December 21, 1922, at which time the motion for a temporary injunction was argued and submitted and taken under advisement by the court.

The following opinions were delivered orally from the bench by the Court, to-wit:

358 In United States District Court.

OPINION, LEWIS, J.

Judge LEWIS announced the decision of the Court, as follows:

We think a brief statement coupled with what has already been said in the railroad tax case will sufficiently express the reasons for our conclusions in those cases.

We gave it as our tentative opinion during the progress of the argument that where the state statutes provide a procedure for the settlement of the complaints of a tax payer on account of his contention that his property has been assessed too high, that that procedure should be exhausted under the authorities before resort to a court of equity is had for the purposes of obtaining the extraordinary writ of injunction. We are disposed now to adhere to that tentative view which we held then. Mr. Judson on Taxation in considering this question, Section 623, says:

"When the question involved is not the validity of the tax in toto, but wholly the amount of the assessment, alleged to be excessive, either on account of overvaluation absolute or relative, or failure to make a required deduction, application must first be made to the revising or equalizing board appointed by the state to hear and act on complaints of excessive or erroneous assessments."

That was done here.

"In the absence of statute, there is no jurisdiction in the courts to review the discretion of such tribunals, that is, a court of
359 equity is not a court of errors to review their decisions. But the procedure established by the State for the correction of assessments, whatever it is, must be followed, if open to the taxpayer, before he will be allowed to enjoin the alleged excessive assessment. If the state practice allows a judicial review of the findings of equalizing boards upon writ of certiorari or other statutory procedure, resort must be had to the remedy thus provided."

The reasons for this rule have been many times stated. They are set out at length by the Supreme Court in Pittsburg Railway against the Board of Public Works. It is impossible for the assessing and valuation officers to know and fix the amount of revenue for all public purposes, schools, county, and state until valuations are determined so that the rate of levy may be fixed, and it is generally recognized as a principle that that should be done as early and as expeditiously

as possible so that public institutions, and the state government itself, will not find itself without funds to administer its public functions. Otherwise, if those questions are open the taxpayers, after the amount of taxes required have been ascertained and valuation fixed and the rate of levy made, cannot go into a Court of equity and enjoin collection of public revenue, and in this case, even to grant what the complaining roads request would leave several hundred thousand dollars of public revenue for the maintenance of schools and
360 county government and state government uncollectible, and force its obligations in the nature of warrants, perhaps to go to discount.

It is for the purpose of avoiding these contingencies and these results which would necessarily follow that the different states have provided for speedy ascertainment and fixing of the valuation and the rate of taxation to be levied. That is thoroughly commented on and set forth in this Pittsburg Railway case. That case arose over the assessment of a bridge. It was a controversy as to whether or not the bridge should have been separately valued and assessed as a structure or building under the statute of the state, or whether, as contended by the railway company, it should have been taken in and counted as part of the railway.

Under the statutes of the state the railroad company was given the right to appeal to the state court, the state trial court. It is true that the statute provided that the parties, the Board of Public Works on the one hand and the railway company on the other hand, could both have been heard fully in that court and could have adduced evidence there. They were given that right but the railway company did not avail itself of that right given by the state statute. It stood by
361 and later went into a court of equity and sought a writ of injunction against the collection of the tax on the bridge assessed as a bridge or separate structure. After a full consideration the Supreme Court concluded:

"The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for the review of the assessment it complains of, is not entitled to maintain this bill."

A number of authorities are referred to in the case in the 280 Federal, Mo. Pacific Railway Company against Conway and Vilonia Road District, which bear out the principles that we are now considering, and which were enforced in that case, one principle being as we understand it, thoroughly established. The only inquiry left in connection with it is whether or not the state provided a remedy for the determination and settlement of the controversy that is presented in this bill. That is to say, that the railway companies properties were assessed too high in comparison with the valuation of farming lands. The statute was repeatedly read during the argument and commented on. Its language leaves its purpose plain and it cannot be obscure. It provided that if the State Board has acted in these

questions of assessment and equalization, which it has full power to adjust, a writ of error may be sued out to the Supreme Court,
362 evidently for the purpose of correcting errors, if any, made by the Board of Equalization.

Similar statutes in this state dealing with county boards of assessment have been passed on by the Supreme Court of Nebraska, and it is held in the Third Nebraska that the County Board of Equalization when it acts beyond its authority, or unjustly to the tax payer is subject to be reviewed in that respect in the Supreme Court, and in that case, Railway Company vs. Washington County, 3 Neb. the audit of the county board was reversed, set aside and vacated. A case of similar nature is McGee, et al. vs. State Ex Rel. No. Am. Cattle Co. 32 Neb., 149. A case treating with the power of the Supreme Court as to the action of the State Board is found in 81, Neb., 139, State Ex Rel. Union Pacific Railroad Company v. the Board of Equalization. Now, in that case, construing the statute of this state, the Supreme Court held that this writ of error which the tax payer was entitled to sue out might properly embody such proceedings as we have here, but that the tax payer could have gone before that board and requested of it that it rule on specific questions, as was requested by the Union Pacific Railway, that it rule specifically as to the value of the railway property on the basis of stocks and bonds, and that
363 the rule specifically on other questions determining or aiding in the determination of the value of the properties. That request was made before the State Board and the State Board declined specifically to rule on those questions. The railway company then sought a writ of mandamus. The Supreme Court reverting to the statutes of this state and calling attention to the fact that the railway company had the right to sue out a writ of error and have the action of the state board corrected. The court then said that if the railroad company wanted to test whether it was the duty of the Board to rule upon those specific questions presented to it by the railroad company it could have embodied in its bill of exceptions, provided for under the statute, the action of the Commission in refusing specifically to rule upon those different questions, and could thus have brought the action of the Board, in declining to rule upon those questions, before the Supreme Court for consideration, and having had that remedy clearly given it under the statute it could not avail itself of the extraordinary remedy of mandamus.

Now, it seems to us this construction of the state statute, not only this statute that was commented on, but other sections of the Nebraska statute with reference to writs of error, must necessarily be a determination and construction by the Supreme Court of its
364 powers in these tax proceedings to take such action on writ of error to the Board as are necessary to correct the very errors complained of now here in a court of equity. Now that would have been a speedy remedy. The statute says that when such a writ of error is sued out that its consideration shall have precedence in the Supreme Court. That could have been done. We cannot assume that the State Board of Equalization would not have followed the opinion of the Supreme Court if it had found that there was an unequal ad-

justment of taxes on account of farm lands being assessed too low and the railroads too high, as is complained of here. The Supreme Court could not have considered the question that was presented to the Board and embodied in the bills of exceptions without announcing its views on the very questions that are presented to this court.

We must assume that the State Board of Equalization would have abided by the conclusions of the Supreme Court and have corrected the errors now complained of. If that had been done it would have been in time in the interest of the public to finally determine the question of the rate of taxation and adjust the rate in keeping with the change in valuations if the plaintiffs' contention here is
365 correct, and thus avoid the very thing that the authorities say is intended to be avoided by these provisions for the final determination of these questions. Now, of course, if the Supreme Court had refused to order a modification or any change in the action of the Board, the railroad companies, having thus exhausted all remedies under the revenue statutes for the correction of these claimed errors and it could now show here that it has been unjustly treated in bearing this burden of taxation, it would have then been open to it to come into this court or into a state court of equity to obtain, and would have been entitled on such a showing to the remedy which it now seeks. Not having done so we are of the opinion that it is not entitled to now maintain this procedure, and we hold that a temporary writ should be denied.

In United States District Court.

CONCURRING OPINION, MUNGER, DISTRICT JUDGE.

I concur in the denial of the temporary injunction. If in the processes of making an assessment for taxes an appeal is allowed by the state statute either to the Board or to a court which can ascertain and fix the true valuation and assessment, there is such an adequate remedy provided as precludes relief by a suit in the United States Court for an injunction against the enforcement of the assess-
366 ment unless the appeal provided by the state statute has been pursued.

172 U. S., 32.
188 U. S., 681.
258 U. S., 122.
257 U. S., 547.
232 Fed., 579.
233 Fed., 235.
280 Fed., 401.
240 Fed., 202.

If such an appeal to the State Court is required because it may fix an assessment that is valid, then a proceeding in error, that is provided by the state statute is also an adequate remedy where the court in such error proceedings has the power to set aside the order making an erroneous assessment and to direct the assessing board to reach a

different result, because the remedy is as effectual if a valid assessment is made by the assessing board acting under the directions of the court as if the court had made such an assessment upon the appeal. Under the construction that has been placed upon the statutes of Nebraska of the same general character as the portion of 5901 of the compiled statutes of Nebraska, which provides for a proceeding in error to the Supreme Court of Nebraska, the Supreme Court has held that the state courts have the power in error proceedings from the actions of boards exercising powers of this nature to review the actions of such Board and vacate and set aside their
367 action.

3 Neb., 30-44.
32 Neb., 149-154.
81 Neb., 139-143-144.

In United States District Court.

DISSENTING OPINION, WOODROUGH, DISTRICT JUDGE.

I find myself driven, with very great reluctance, to dissent in this case. There are many obvious reasons for my reluctance. I appreciate very deeply the drastic character of the remedy sought to be availed here, and appreciate the heavy burden to the State and the unhappy effects upon the State sovereignty that follows from the issuance of such injunctions as are sought here. But as I understand the law the case made out here on the bill and upon so much of the disclosed facts that are conceded, that is, as to the failure to take any error proceedings to the Supreme Court of the State, as I understand the law a prima facie case is clearly made out under—I wouldn't say under all of the authorities, because these suits have been very numerous many of them reported in the books, and under such circumstances there are always opinion- that seem to be at variance with the others. But I understand the law to be clearly established that where in the levying of a tax, in the making of an assessment and the levying of a tax in the performance of that legislative and administrative function—steps have been taken which result
368 in such a condition as is claimed by the plaintiff here; that is, the plaintiff has been discriminated against, that the constitution and laws of the United States have been violated, and that, as in this particular case it happens, there are diversities of citizenship, where that stage has been reached, there remains nothing but a proceeding in the nature of a suit, a strictly judicial inquiry by a court or a body that acts as a court and that exercises strictly judicial powers. When in other words the controversy has become justiciable and only justiciable and there remain no further administrative functions to be performed; when the assessment is made and the taxes laid and either w-ong or right exists, and there is a dispute about that, and the matter is justiciable and resort must be had to a court; in such a case resort can be had to the courts of the United States, and must be had to the courts of the United States, and that in resorting to the courts of the United States there is no harshness

to the State, and there is no harshness to the individual, there is merely assertion of the supremacy of the Federal law, that citizens and the people be not deprived of their property by discriminatory proceedings nor their rights taken away by unlawful proced-
369 ure. It seems to me that is the situation here; that the various steps—a thousand or two thousand assessors have gone out into the State of Nebraska, into the different counties, each assessor among his neighbors, and he has made his assessment and that has gone then to the County Boards, and they have made their equalization, and that has gone up to the State Centralization body and it has taken its action; parties have been heard, proceedings have been taken, the railroad has appeared and it has made its showing, and the assessment is made, the assessment is certified back; it is attached. If it is wrong, if it deprive these plaintiffs of their property contrary to the constitution and the provisions of the constitution of the United States, it has been done, and the only relief is the relief that can be obtained in the court. Now, whether they choose to go to a state court or a United States Court, depends upon them. The United States laws give the plaintiffs situated as these parties are, the right to go into the United States Court, and that right must never be abated or diminished. It is as necessary and as vital a safeguard to the liberties and rights of people as any that are written into the constitution. No more vital, no more fundamental right exists. And I take that view as to this case even though
370 there exists in the State Court means available for judicial inquiry and there is a justiciable controversy that the state courts could determine just as well and upon the same principles as we could apply. Even then the right of those who assert their claims under the constitution and the laws of the United States and those who present a diversity of citizenship to bring the case to the United States Court remains. So they would have a right to come here even though there may be found, as there is found often in many states, a way to get complete relief in the state courts whether there are such ways is a matter often of intricate and subtle inquiry. Many of the cases cited by counsel here, and by the court, turn upon the particular facts and particular analysis of the remedy that the state did offer and whether those remedies were purely what I may call court remedies presented on court proceedings or by administrative bodies. I have particularly in mind this very last decision of the Supreme Court of the United States, Keokuk & Hamilton Bridge Company against Sahn Jr., et al., 42 Supreme Court Reporter, page 207. There application was made for a writ of injunction to remedy just such a wrong as is claimed to exist here. They allege not invalidity of assessment and tax, but discriminatory over-valuation. The record shows that the plaintiff did not even apply
371 to the Board of Review to correct his assessment. That was the situation in the last decision of the Supreme Court of the United States, and that would certainly have precluded the issuance of a writ of injunction—the other comment of the court is more or less obit*ur*—but the court naturally and properly reviews the fact that in Illinois at that time for the purpose of correcting a dis-

criminatory or unlawful assessment of taxes many resorts were provided. It was provided that a review should be made by the assessors and then the Board of Review was to give a hearing, and then when the tax was finally laid there was not to be an immediate distraint and levy upon the property but means of collection were provided whereby the state or the subdivisions of the state could bring suit in local courts where all questions of validity and invalidity of the tax would be open and that had to be done before there was distraint, before there was actual deprivation of property. There was presented a situation where, as the Supreme Court of the United States says, there was no basis for resort to a suit in equity or to an injunction suit as being necessary to prevent sale for illegal tax creating a cloud on the title or multiplicity of suits of other irreparable injury, no necessity whatever. In this case, in this state, if there were further provision for an appeal then in my judgment
372 the matter would have been more debatable but as I view the Nebraska statute upon which reliance here is based solely for this decision, it consists of just one sentence, just one sentence. The whole remedy that is held to be a sufficient remedy is found in only one sentence of the statute. That sentence is this: "From any final decision of the State Board of Equalization and Assessment, any person, county or municipality affected, thereby may prosecute a writ of error to the Supreme Court and upon demand therefor the State Board shall prepare a certified transcript of its record and proceedings involved in such decision upon payment of the fees."

Now, how that error proceedings is to be gone ahead with, what it shall present to the court, what the steps shall be, how through the means of it the remedy shall be availed, is left entirely to conjecture. There has been no resort to the statute in any case, any reported case, of the Supreme Court of the state, and there remains just that vague assertion that a petition in error may be filed. Now, to my mind, to say that that affords any kind of remedy for this sort of situation is to disregard the practical working of those boards and of the taxing systems as we all know it to be. I waive the known generally understood short-comings of a writ of error as a
373 means of remedying any wrong. It is a writ of most limited application. Suits at law are brought in this court; there is a diversity of citizenship; they are tried before juries; juries are carried away by their sympathies and render big verdicts. The litigants then go to the court of appeals and there the learned judges go over all the authorities and elaborate and demonstrate that this court and this jury were wrong and were carried away from the law by their sympathies, and yet on the handing down of their mandate, going to the full extent of their powers under this writ of error, plaintiff dismisses this case and starts over again in the State Court where all of these considerations have no weight, and a judgment is rendered finally against the successful party in this court. That is the obvious limitation of a writ of error, even in its broadest application. It has been practically abolished in the State of Nebraska. Practically all reviews are by some sort of proceeding that

will admit of and offer opportunity at any rate to get more relief than could be obtained under this old almost obsolete writ of error now, even as applied to the general procedure of the courts. But consider the writ of error as applied to this situation here, a means of rectifying and remedying such a wrong by the subordi-
374 nate body as is here involved. To me it seems utterly contrary to all my experience and observation that any lawyer in the State would think for a moment of resorting to such a writ to remedy such a situation. I think the cases read here are illustrative of what you can do with a writ of error in this State. I remember when we used to have cases before a justice of the peace of forcible entry and detainer. The practice involved certain detailed steps whic- had to be taken by the magistrate before he could eject a tenant on forcible entry. In many cases there would be error in those steps. The magistrate's record would reflect that his judgment was without jurisdiction. Now, in that kind of a case you could take a writ of error to the District Court and obtain relief by the wiping out of the judgment in the court below. Though even there the legislature had to supplement the court's power in order to get any substantial justice out of the proceeding. In the case in the early Nebraska reports wherein the Board of Equalization, without any notice, though the statute was specific as to notice, proceeded to raise the assessment of the railway company twelve thousand dollars—now, its record and proceedings would disclose that situation, would disclose that notice had been given and what steps had been taken to remedy that. Resort could be had to the writ
375 of error, and by the writ of error you could present to the District Court the fact that here was a heavy assessment of taxes laid without any notice at all, and contrary to the provisions of the statute, and an invalid act of the board. To such an extent the writ of error could be used. But consider the situation as to the writ of error here. This Board comprises, in this State, officers of manifold duties. How do they actually proceed? All of us have been before a Board of Equalization at one time or another. Now, as a practical proposition, what do you do before the Board of Equalization? You go in before the Board and present your claim that your taxes are assessed too high, and show that the neighboring property is assessed lower. The Board makes no record of citations you give them of the evidence, so-called, that you offer. They consider it in the light of the work they are doing. Then they turn to the assessor whose whole life work is to familiarize himself with those things. They say the assessment should be lowered or raised as their judgment at the time indicates. That is the practical working out that is going on in thousands of instances every year in this State. That is the practical way in which taxes are assessed and laid—has to be. There isn't any other method. Now, just
376 fancy any other method concerning the thousands of complaints that are made, fully thousands in Douglas County. I have been before the Board and I know that is the situation. They assign for different days; a hundred fifty complaints to hear

today, a hundred and fifty tomorrow, and so on. Fancy the situation of that Board attempting to proceed judicially, in a strict sense, as in a court, as to those complaints. A tax never could be laid. It is the same before the State Board of Equalization in practical effect. Here is the main officer of that Board, and year in and year out, and all the year through he is endeavoring to acquaint himself intimately, not only with the actual values but with the reasons for them and the statistics and the various scientific work that is going on in the nature of valuation. He has some of it in his head, a whole lot of it in his book, and the other officers gather there at the Board meeting too. A railroad comes in and says: "Our assessment is high," or it is discriminated against in comparison with others. Now, how impossible it is to hold that Board to be a court, and to proceed like a court, and to make such a record that their errors could be made to appear to a Supreme Court upon a transcript of their proceedings. I understand some Boards have at-
377 tempted to go through this form of inquiry as to some of these large corporations, like the railway systems, and noticeably before the Board in Iowa, there appears the great mass of stuff that was laid before the Board. If so, it is only figuratively laid before the Board. The proceedings would only be a matter of form. Their real judgment is formed as the law intended it should be formed by these officers using their judgment going out and looking at the property, getting all the information they can from here and there and everywhere, and that they should make such a record as a justice of the peace has to make in a forcible entry case so that his lack of power can appear in a writ of error proceedings seems to me to be utterly regardless of the practical situation. But supposing, even conceding, that there is nothing to that line of thought, what had actually occurred here before this Board that could be reviewed by a writ of error? What did actually occur that the Supreme Court could take as a basis to afford any relief to these railroad companies?

Why, what actually occurred was that the attorneys for the railroad company appeared as representing all the railroads in some aspect of the matter and offered some iolated documents before the Board and asked that the record show that they were offered
378 to the Board, here and there some few isolated excerpts of the great mass of accumulated documents that relate to and tend to disclose the value of railroad property, the whole record covering only a matter of a few pages, and thereupon, especially in 1921, the chairman of the Board said, "well, is that all?" "That is all." "All right, we will certify that is all you did here today was to present these documents, the assesment stands as we have heretofore indicated."

Now, I don't see how any possible review of the claims and matters set forth here could be made by the Supreme Court on that kind of a record. Certainly there is no intimation that the Supreme Court would have any right to go outside on its writ of error and get extraneous testimony. A court of general jurisdiction could not do so let alone the merely appellate tribunal. The proceedings in my

mind would be a mere farce, a mere waste of time, couldn't get anywhere, couldn't result in any remedy, couldn't result in any avoidance of this alleged discrimination. To my mind, it is perfectly clear, not only in the first place that the justiciable stage of this dispute has been reached when this bill was brought, not only that the statute did not afford any means within the State to rectify the alleged wrong, but that the reference to the writ of error pro-
379 vided in that one sentence of the statute is of no force or weight at all. No reasonable guess could be made how it could lead to any just settlement of the dispute.

The conclusions reached by my senior associates, and a majority of this court will be by myself considered binding in the litigation that is pending before me.

There have been submitted to me on final proof the petitions of the Northwestern and the Chicago, St. Paul, Minneapolis and Omaha Companies, and all the evidence has been submitted, wherein they ask for an injunction such as prayed here. Now, if this decision had gone off in the merits it would have of course had nothing more than a helpful and guiding effect upon my labors in the Northwestern and the M. & O. cases already submitted. But there is presented there exactly the same question of jurisdiction that is presented here, and, as I find the judges here are of the opinion, and find in this case, that we have no jurisdiction to proceed, I will proceed no further in the Northwestern case, but will hold the matter in statu quo under advisement, providing there is a review taken of the judgment to the court here and that it will be indicated to me that there will be a review. If there is of course, I will know of it be-
380 cause the proceedings for review come largely before me anyhow.

I would comment further though, inasmuch as we have gone this far into it; that if the question had come before this Court of the issuing of an injunction on the merits, and this preliminary question had been decided the other way, I should have entertained very grave doubts, in fact would find myself totally unprepared to say that a temporary injunction should issue. I have pursued the inquiry into the facts only part way. There are of course many documents and many sources of information about values to be gone over. I do not want to be understood as saying, intimating or implying that I have reached any satisfactory conclusion at all on the question of whether, assuming jurisdiction, on the merits of a preliminary injunction and interlocutory order was justified.

381 COLLOQUY BETWEEN COURT AND COUNSEL.

Mr. Root: If the Court please: Speaking of the Burlington I ask that the effective date of this order be postponed forty days, and the reason is this: On the fourth day of January, 1923, a very considerable number of the county treasurers will go out of office, and I think that under the rulings in the Federal courts the case might become moot as to them. I ask that the effective date of the order be postponed so that we may apply to His Honor, Judge Munger,

for permission, on the fifth day of January, 1923, the earliest date that we can do so, to file a supplemental petition to bring into the case those treasurers who come into office for the first time. Now, as to those who may have been re-elected, if any were so fortunate, of course they continue here. Then, in the meantime, my people will determine whether they want to proceed further with this case. I have no authority to say that they want to ask for a—that they intend to appeal. That depends upon my superiors. But if the order denying the application for an interlocutory order be made effective now the difficulties of securing any review of your Honors' decision will be practically insurmountable, at least extremely difficult. We have no desire to unduly hold back any taxes that are due the people of this State, and of any amount that should eventually be
382 deducted we will have to pay our proportion of them in the coming years. So I think it is within your Honors' discretion that that order might be made, and I am asking now, as a matter of grace that this be done, and I submit it to your Honors' discretion.

Judge Woodrough: That is that you have forty days in which to file a new bill?

Mr. Root: No, that the effective date of this order be forty days hence. The case then remains without any injunction, and a case pending. I will apply then to the Lincoln Division for permission to file a supplemental petition bringing in the new treasurers. Then I assume that under the arrangements of comity which exists between the states and ourselves, that they can be placed in such situation that they will be availed of this order, and that we may then, if we see fit, ask for an appeal from this order.

Mr. Lamaster: I would say that the practice has been, as I understand it, that when an officer goes out of office and a new officer comes in, that the new officer is just substituted for the retiring officer. We have done that in numerous cases by agreement; there never has been any question about it, and we are perfectly willing to agree to that procedure.

383 Mr. Root: There has been a quite recent decision by the chief justice on that point.

Judge Lewis: Counsel want the effectiveness of the order to run against the parties when they come in on the fifth of January so that there can be no question about whom it runs against. Those against whom it now runs, if it is now entered will be out of office. That order is negative in character.

Mr. Root: There is a quite recent decision by Chief Justice Taft that where an officer is not one of a continuing body that under the Federal statutes the case becomes moot as to them.

Judge Lewis: You say January fifth?

Mr. Root: January fifth is the incoming date. It is the first Thursday after the first Tuesday. It will take a little time to get those men all in there.

Judge Lewis: What date do you want it?

Mr. Root: Well, I was asking that it be effective forty days from today, if that comes on a week day.

Judge Lewis: Well, that is hardly an appropriate date. Judge Munger suggests that the most appropriate way would be not to enter the order, and not let it bear date until the date you want.

Mr. Root: We will move with all the expedition possible.

384 Judge Lewis: Then you suggest the date and let the order bear that date.

Mr. Root: I have suggested forty days, but if that is too remote let it be sooner. If some of the treasurers feel that they don't want to consent to that——

Judge Munger: I will be out of the State at that time. I would suggest that you ought to get around not later than the tenth of January.

Mr. Root: But I make the application today to file that supplemental petition on the fifth of January.

Judge Munger: Isn't this what you really desire: That we take it under submission, and when the order is made denying the injunction that it be made at the time when the treasurers are then in office. If they come in on the fifth of January, can't you file your petition and have some appearance ready for them by the tenth?

Mr. Root: I surely will have my petition ready.

Judge Munger: Mr. Lamaster, can you have your appearances ready?

Mr. Lamaster: We are authorized to enter appearance for all treasurers except the treasurer of Sarpy County, and if there

385 is a new treasurer there perhaps we may be authorized to enter appearances for Sarpy County.

Mr. Root: Can't Your Honors say that you will hold the order until the fifteenth of January?

(To which query there was no response.)

Judge Lewis: Prepare the form of order you want and submit it to Mr. Lamaster.

Finis.

386 In United States District Court.

STIPULATION SETTLING STATEMENT OF EVIDENCE.

It is stipulated this 1st day of February, 1923, by and between the parties hereto, by their respective solicitors, that the above and foregoing condensed statement of the evidence and the statement of the oral opinions delivered by the three Judges with respect to their decision overruling the application of Chicago, Burlington & Quincy Railroad Company for a temporary injunction and the statement of the proceedings during said hearing is accurate and complete, and that the same shall be approved and settled by the Court without notice to appellees defendants herein, or their counsel, and shall be filed in the office of the Clerk of this Court and become a part of the record herein. Byron Clark, Jesse L. Root, J. W. Weingarten, Solicitors for Plaintiff. O. S. Spillman, Attorney General of Nebraska;

Hugh Lamaster, Asst. Attorney General of Nebraska, Solicitors for All and Singular the Defendants.

387 In the District Court of the United States for the District of Nebraska, Lincoln Division.

[Title omitted.]

ORDER SETTLING STATEMENT OF EVIDENCE.

We, Robert E. Lewis, Circuit Judge for the Eighth Judicial Circuit of the United States Court, and Joseph W. Woodrough, Judge of the United States District Court for the District of Nebraska, do hereby certify that on this 5th day of February, 1923, counsel for the appellant, Chicago, Burlington & Quincy Railroad Company, presented to us, for settlement and allowance, a condensed statement of the evidence adduced and the proceedings had during the submission of appellant's application for a temporary injunction against all and singular the defendants herein, accompanied by proof of service thereof upon counsel for defendants; and we do hereby certify that the above entitled case, upon the application of appellant for an interlocutory injunction, was heard before us, sitting with Honorable Thomas C. Munger, Judge of the United States District Court
389 for the District of Nebraska, in said Court, and that the foregoing condensed statement contains all of the evidence material to a determination of the questions involved in the appeal taken by the appellant, Chicago, Burlington & Quincy Railroad Company, from the order and decree of this Court in favor of the defendants, entered on the 10th day of January, 1923, denying and overruling the application of appellant for an interlocutory injunction against all and singular the defendants County Treasurers in the State of Nebraska, and their successors in office, pending the trial of this case on its merits, from collecting taxes against appellant for 1922 taxation upon a valuation greater than that to be fixed by the court in accordance with the prayer of the petition, from issuing distress warrants, commencing suits or imposing penalties for any excess of the taxes thus laid greater than that fixed by the Court, or from collecting interest or costs thereon save and except for city and village taxes. That the Honorable Thomas C. Munger, Judge of the United States District Court for the District of Nebraska, is not now within the United States; that the foregoing condensed statement of the evidence and of the proceedings is a true, complete and properly prepared statement of all of the evidence in said case material to said appeal, and is hereby approved and allowed as such, and it is hereby——

389 Ordered, that said statement shall be forthwith filed in the office of the Clerk of this Court and become a part of the record in this case.

Done at Lincoln, Nebraska, this 5th day of February, 1923. By the Court. Robert E. Lewis, Circuit Judge. J. W. Woodrough, District Judge. Attest: R. C. Hoyt, Clerk, By J. H. McClay, Deputy.

[Seal of the United States District Court, District of Nebraska, Lincoln Division.]

390 UNITED STATES OF AMERICA,
District of Nebraska,
Lincoln Division, ss:

In United States District Court.

CLERK'S CERTIFICATE.

I, R. C. Hoyt, Clerk of the District Court of the United States, in and for the District of Nebraska here testify that in obedience to an order of said court and in compliance with an agreed præcipe, the foregoing transcript of the record has been made: that the same is a full, true and faithful transcription of the pleadings, orders and procedings of record and file in said Court appertaining to the case wherein the Chicago, Burlington & Quincy Railroad is Appellant, and W. H. Osborne, Jr., as Tax Commissioner of the State of Nebraska, and others are appellees in so far as the record has been requested by the parties as specifically set out in an agreed præcipe therefor; that a duly authenticated copy of the citation issued by the Court on the 16th day of January, 1923, together with all the endorsements thereon, has been made, filed, lodged and remains with the files of the court appertaining to said case, and that the original is transmitted herewith and made a part of said transcript, and may be found at page 116 thereof; that said transcript consists of 390 type written pages numbered consecutively, beginning with No. 1, and ending with No. 390, including index, title pages and Clerk's Certificate.

In witness whereof, I have hereunto set my hand as Clerk aforesaid, and caused an impression of the Seal of said Court to be hereunto affixed at the City of Lincoln within said District and Division this 8th day of February, A. D. One Thousand Nine Hundred Twenty-Three. R. C. Hoyt, Clerk as Aforesaid, By J. H. McClay, Deputy. [Seal of the United States District Court, District of Nebraska, Lincoln Division.]

Endorsed on cover: File No. 29,402. Nebraska D. C. U. S. Term No. 852. Chicago, Burlington & Quincy Railroad Company, appellant, vs. W. H. Osborne, as tax commissioner of the State of Nebraska; Gilbert E. Haase, as county treasurer, Buffalo County, Nebraska; Fred E. Ericson, as county treasurer, Burt County, Nebraska, et al. Filed February 14th, 1923. File No. 29,402.